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Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 1. General Provisions

Subchapter A. General Rules

§101. Board of Commerce and Industry

A. The principal offices of the board shall be at the Louisiana Department of Economic Development, Office of Commerce and Industry, located at One Maritime Plaza, Baton Rouge, Louisiana, or at such other place that the board may determine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§103. Board Membership

A. Number and Qualifications of Board Members. The board shall consist of 20 members, unless R.S. 51:923 is amended to provide for a different number of board members. Fifteen members shall be appointed by the governor from among representatives of the major economic groups within the state of Louisiana, one who shall be an elected municipal official appointed by the governor from a list of three names submitted by the Louisiana Municipal Association and one who shall be an elected police juror, councilman, commissioner or parish president appointed by the governor from a list of names submitted by the Louisiana Police Jury Association. In addition, the governor, or his designee, the lieutenant governor, or his designee, and the secretary of the Department of Economic Development, or his designee, shall be *ex officio* members of the board with full right to participate in and vote on all matters.

B. Appointment. Each appointment by the governor shall be submitted to the senate for confirmation and shall again be submitted by the governor to the senate for confirmation every two years after the initial confirmation.

C. Term. The members, other than the governor, lieutenant governor and the secretary of the Department of Economic Development, shall serve for terms which shall be concurrent with the term of the governor making the appointments. The governor and lieutenant governor shall serve during the term of office of each. Other than the three *ex officio* members above, all other members shall continue to serve until their successor is appointed and takes office.

D. Vacancy. A vacancy occurring for any reason shall be filled in the manner provided in §103.A hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§105. Compensation of the Board

A. Members of the board shall serve without compensation. Each member shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of official duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§107. Meetings of the Board

A. Open Meeting. All meetings of the board shall be subject to the Open Meetings Law as provided in R.S. 42:1 et seq.

B. Annual Meeting. The year of the board shall begin February 1 each year. The meeting following the beginning of the year the board shall elect its officers who shall serve until the next annual meeting or until their successors are elected.

C. Regular Meetings. The board may meet as often as it deems necessary provided that there shall be not less than four regular meetings each year.

D. Special Meetings. A meeting may be called by the chairperson or by joint call of at least three of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board.

E. Quorum. Excluding any vacancies on the board, a majority of the members of the board shall constitute a quorum. In the absence of a quorum, a majority of the members present at the time and place of any meeting may adjourn such meeting from time to time, with notice given in accordance with the Open Meeting Law.

F. Parliamentary Procedure. Unless otherwise provided by law to the contrary, all meetings of the board shall be conducted in accordance with *Robert's Rules of Order*.

G. Meeting Place. The board, its committees and subcommittees, shall hold its meetings at the principal office of the board, or at such other place as may be fixed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§109. Notice

A. Notice by Mail. Under the provisions of Louisiana law or these rules, whenever notice is given to any member it shall not be construed to mean personal delivery of notice. Notice will be considered to be given in writing on the day the written notice is deposited in a post office with such notice bearing the member's address as it appears in the records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§111. Officers

A. The officers of the board shall be elected by the members of the board and shall be a chairperson and a vice-chairperson and such other officers as the board shall consider necessary. There shall be no prohibition against officers succeeding themselves.

1. Chairperson. The chairperson shall be a member of the board and shall preside at all meetings of the board at which he or she is present. The chairperson shall perform such other duties and have such other powers as from time to time may be assigned to the office by these rules or by the board. Election of the chairperson shall be at the annual meeting or such other time as may be necessary. The chairperson shall hold office until the next annual meeting.

2. Vice-Chairperson. The vice-chairperson shall be a member of the board. At the request of the chairperson or in the event of his absence or disability, the vice-chairperson shall perform all duties of the chairperson, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the chairperson. The vice-chairperson shall also perform such other duties and have such other powers as from time to time may be assigned to the office or to the vice-chairperson by these bylaws or by the board or by the chairperson. The vice-chairperson shall assume the role of chairperson of the screening committee. Election of the vice-chairperson shall be at the annual meeting or such other time as may be necessary. The vice-chairperson shall hold office until the next annual meeting.

B. Records. The board secretary shall keep an accurate record of all proceedings of the board, and shall be the custodian of all books, documents, and papers filed with the board and the minute books of the board. The secretary shall cause copies to be made of all minutes and other records and documents of the board and shall certify that such copies are true copies, and all persons dealing with the board may rely upon such certification. The records of the board shall be kept at the principal office of the board or at such other place that the board may determine. The records of the board shall be available for public inspection at reasonable times in the manner provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§113. Standing Committees

A. The board, by resolution adopted by a majority of the board then in office, may establish one or more standing committees, each which shall consist of three or more board members. Each committee shall have and exercise the authority of the board as contained within the resolution establishing such committee and shall perform such functions as shall be provided for in such resolution.

B. Appointment of Members. The officers and members of all standing and ad hoc committees shall be appointed by the chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§115. Speaking before the Board**A. Time Limit Set on Speaking before the Board**

1. Petitions to the board by an applicant and/or representatives of same shall, as a group, be limited to at total of 10 minutes to put forward their plea.

2. Opponents to a given application shall, as a group, have a total of 10 minutes to put forward their opposition.

3. Any and all interested parties shall, as a group, have a total of 10 minutes to put forward their views.

4. If any group has more than one speaker, the group may divide their 10 minutes by the number of speakers in that group, however in no case will any group be allowed to speak for more than 10 minutes total.

5. Questions addressed to an applicant or others by a board member are not subject to the above time limits.

B. Any person wishing to appeal the action of the Board of Commerce and Industry or wishing to petition the board or any of its committees or sub-committees must submit their appeal or petition along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the Board of Commerce and Industry, the committee or sub-committee, during which the appeal or petition will be presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2243 (October 2000).

Subchapter B. Fees (Reserved)**Chapter 3. Gaming Ineligibility****§301. Gaming Ineligible**

A.1. Any entity who has received or applied for a license to conduct gaming or is owned, controlled or managed by a

company that has received or applied for a license to conduct gaming shall be ineligible to receive a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry.

2. If an entity who has received a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry, subsequently, during the term of such contract, applies for or receives a license to conduct gaming or becomes owned, controlled or managed by a company that has applied for or received a license to conduct gaming, the Board shall, after notice, terminate the contract, and the entity shall repay any tax exemption, credit, rebate or other benefit received pursuant to the contract. The entity shall notify the Board of its application for or receipt of a gaming license or change in ownership, control or management.

3. An entity who is owned, controlled or managed by a company that has received or applied for a license to conduct gaming may apply for a contract for a tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry if the business operated by that entity is not related to and does not provide support to the gaming activity. The burden shall be on the applicant to prove that the business is not related to and does not provide support to the gaming activity. If the Board determines that the entity has provided sufficient proof that the entity is not related to and does not provide support to the gaming activity the Board may, in its discretion, grant a contract for any tax exemption, credit, rebate or other benefit.

B. Definitions

Bingo the game of chance commonly known as bingo or keno played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers, as objects, similarly numbered, are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on such a card.

Economic Interest any interest in a contract, license or licensee whereby a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other benefit.

Game any banking or percentage Same which is played with cards, dice, or any electronic, electrical, or mechanical device or machine for money, property, or any thing of value. Game does not include a lottery, bingo, pull-tabs, raffles, electronic video bingo, cable television bingo, dog race wagering, or any wagering on any type of sports event, including but not limited to football, basketball, baseball, hockey, boxing, tennis, wrestling, jai alai, or other sports contest or event or racehorse wagering.

Gaming Device any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine, including but not limited to slot machines or video draw poker devices, used directly or indirectly in connection with gaming or any game which affects the result of a wager

by determining wins or losses. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any Same, or which determines the outcome of a game.

Gaming Operations or Gaming Activities

a. the use, operation, offering or conducting of any game or gaming device;

b. the conducting, or directly assisting in the conducting, as a business, of any game, contest, lottery, or contrivance on board a commercial cruise ship used for the international carriage of passengers whereby a person risks the loss of anything of value in order to realize a profit;

c. the intentional conducting or assisting in the conducting of gaming activities upon a riverboat as defined and authorized in R.S. 4:501-4:562, whereby a person risks the loss of anything of value in order to realize a profit;

d. the intentional conducting or assisting in the conducting of gaming operations at the official gaming establishment as defined and authorized in Chapter 10 of Title 4 of the Louisiana Revised Statutes of 1950.

Pull Tabs single or banded tickets or cards each with its face covered to conceal one or more numbers or symbols, where one or more card or ticket in each set has been designated in advance as a winner.

Racehorse Wagering wagers placed on horse racing conducted under the pari-mutuel form of wagering at licensed racing facilities that is accepted by a licensed racehorse wagering operator.

Raffle the game of chance commonly known as raffle or raffles played by drawing for prizes or the allotment of prizes by chance, by the selling of shares, tickets, or rights to participate in such game or games, and by conducting the game or games accordingly.

Slot Machine any mechanical, electrical, or other device, contrivance, or machine which, upon insertion of a coin, token, or similar object therein or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

Video Draw Poker device any unit, mechanism, or device authorized pursuant to the provisions of this Part, that, upon insertion of cash, is available to play or simulate the play of the Same of draw poker or other card games, utilizing a cathode ray tube or video display screen and microprocessors in which the player may win games or credits that can be redeemed for merchandise or cash. The term does not include a device that directly dispenses coins, cash, tokens, or anything else of value, except the ticket voucher required in accordance with the provisions of this Part. The term does not include any device authorized to be used in the conducting of charitable gaming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:926, 51:1786(6), 47:4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 21:258 (March 1995), amended by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives, LR 26:630 (April 2000).

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§501. Use of Louisiana Contractors, Labor and Supplies

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies and equipment manufactured in Louisiana, or, in the absence of Louisiana manufacturers, sold by Louisiana residents, and to the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§503. Time Limits for Filing of Advance Notifications and Applications (Rule 2)

A. An advance notification of intent to apply for tax exemption shall be filed with the Office of Commerce and Industry on the prescribed form prior to the beginning of construction or installation of facilities. The board may, in its discretion, extend the time for filing, for good cause shown by the applicant. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$100 shall be submitted with the form. This paragraph applies to all applications other than those covered in §505, miscellaneous capital expenditures.

B. Application for tax exemption and the Project Completion Report must be filed with the Office of Commerce and Industry on the form prescribed not later than three months after the beginning of operations. If the construction is not complete at the time of filing the application, and operation of the project has begun, the applicant must file the Project Completion Report within 30 days after completion of construction (also, see §525). The

deadline for filing the application may be extended pursuant to §523.

C. An application fee shall be submitted with the application based on the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the fee submitted is incorrect or the form is filed incomplete or with incorrect information. The document may be resubmitted with the correct fee. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted for eligible projects, shall not be refundable.

E. In order to include an application for the next scheduled meeting of the Board of Commerce and Industry, applications must be received a minimum of one month prior to the next scheduled Screening Committee meeting date. The authorized board representative, at his discretion, may accept certain applications beyond this date.

F. If applicant submits the application after the required due date established by Subsection B of this Section, the term of the initial contract of exemption may be reduced by one year for each year or portion thereof, that the application is filed late. The board may impose any other penalty for late submission that it deems appropriate.

G. Contractee's eligibility for exemption and the property exempted for the initial contract period will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted for the initial contract period may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994).

§505. Miscellaneous Capital Additions (Rule 3)

A. Tax exemption applications for miscellaneous capital additions totaling \$5,000,000 or less; or, accumulated capital additions totaling \$5,000,000 or less may be filed. Any dollar amount above the \$5,000,000 limit per application shall automatically be restricted from the total. This type application should be filed using the following guidelines:

1. Not later than March 31 of each year, with the exception of Orleans Parish (see Paragraph 4), applications for tax exemption shall be filed on the prescribed form with the Office of Commerce and Industry, listing the nature, the date and the amount of miscellaneous capital additions completed during the preceding calendar year, and deducting

therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer.

2. An application fee shall be submitted with the application based on the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

3. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the fee submitted is incorrect or the form is filed incomplete or with incorrect information. The document may be resubmitted with the correct fee. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted for eligible projects, shall not be refundable.

4. For Orleans Parish applications for tax exemption on miscellaneous capital additions should be filed not later than October 31 and should cover items completed since August 1 of the preceding year, and deducting therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer.

5. The board may restrict the years of eligible exemption, on the initial contract, if applicant submits the application after the required due date established by §505.A.1 and A.4 which is relative to said location of new manufacturing establishment or addition. The term of the contract may be reduced by one year for each calendar month, or portion thereof, that the application is filed late. The board may impose any other penalty for late submission that it deems appropriate.

6. A miscellaneous capital addition is an accumulation, over a 12-month period of small capital outlay purchases totaling a maximum of \$5,000,000.

7. Contractee's eligibility for exemption and the property exempted for the initial contract period will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted for the initial contract period may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended and promulgated, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994).

§507. Manufacturing Establishment Clarified (Rule 4)

A. The terms "manufacturing establishment" and "addition" as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engage in the business of working raw

materials into wares suitable for use or which give new shapes, qualities, or combinations to matter which already has gone through sonic artificial process.

B. The Board of Commerce and Industry shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517, Rule 9) and additions for existing manufacturing establishments within the state of Louisiana. Exemptions are granted to the actual owners of buildings which house a manufacturing operation, and/or facilities which are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment; and/or

b. facilities which consist of manufacturing equipment operated specifically in the manufacturing process.

C. If a property owner includes clauses in the lease agreement or correspondence relating to the Industrial Ad Valorem Property Tax Exemption Program ("the Program"), that the lessors have joined in and ratified all actions of the lessees, and the lease provisions make it evident that the property owner contemplated and bargained for an actual role in the property renovations and improvements, the lessee could make application for the program.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994).

§509. Office Furniture and Fixtures (Rule 5)

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and permanently located at the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§511. Portable Equipment (Rule 6)

A. Portable equipment is subject to exemption if it is not removed from the exempted property and if such equipment is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased or used outside facility boundaries.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§513. Relocations (Rule 7)

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the prior facility.

B. Capital additions for remodeling an existing manufacturing facility may be exempted. If replacements are made, only the capital expenditures in excess of original cost shall be eligible for tax exemption.

C. Exemption may be granted on the cost of rebuilding partially or completely damaged facility, but only on the amount in excess of the original cost.

D. Original costs, deducted from replacements made or rebuilding, shall be clearly identifiable on the records of the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§515. Used Equipment (Rule 8)

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VD, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994).

§517. Assessed Property (Rule 9)

A. The Board of Commerce and Industry shall not consider for tax exemption any manufacturing establishment, or addition thereto, once such establishment or addition has been in operation for a period of six months unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the taxable rolls. If the establishment or addition is on the taxable rolls the Board shall consider granting tax exemption if the assessor and the Louisiana Tax Commission both agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

B. Under no circumstances shall the board consider for tax exemption any buildings, equipment and/or additions listed on an application submitted by a manufacturing establishment once ad valorem property taxes have been paid on the buildings and/or equipment listed on said

application. Items listed on said application, where ad valorem property taxes have been paid, shall be considered as ineligible items and shall be restricted from the amount applied for.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, office of Commerce and Industry, LR 20:866 (August 1994).

§519. Land (Rule 10)

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VU, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§521. Inventories (Rule 11)

A. Inventories of raw materials used in the course of manufacturing and inventories of finished products are not eligible for tax exemption. However, materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing facility. Some examples of these are: ammonia in a freezing plant, solvent in an extraction plant and catalyst in a manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§523. Extension of Time (Rule 12)

A. The authorized board representative may, upon receipt of a written request, prior to the document due date, grant an extension of time for the submission of applications (§503, Rule 2 only), project completion reports, or affidavits of final cost for a period not to exceed six months.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§525. Effective Date of Contract (Rule 13)

A. The owner of a new manufacturing establishment or addition, shall carefully document the beginning date of effective operation, and also document the date that construction is essentially complete. The owner must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report form not later than three months after the beginning of operations or 30 days after completion of construction, whichever occurs last. The authorized board representative shall indicate, with a

return copy of that report, the effective date of the tax exemption contract, which shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever was sooner.

B. The assessment date for Orleans Parish is August 1. The effective date of contracts for a new manufacturing establishment or addition located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§527. Affidavit of Final Cost (Rule 14)

A. Within six months after construction has been completed, and/or receipt of the fully executed contract whichever is later, the owner of a manufacturing establishment or addition shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost for an on-site inspection that shall be conducted by a representative of the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§529. Renewal of Tax Exemption Contract (Rule 15)

A. If a renewal of the exemption is desired, a renewal application must be filed on the prescribed forms with the Office of Commerce and Industry not more than six months prior to and not later than the expiration of the initial contract. A fee of \$50 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the Board of Commerce and Industry for an additional period up to but not exceeding five years.

B. Contractee's eligibility for a renewal contract and the property exempted for the renewal period will be reviewed by the board using the same criteria that was used for the initial contract and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract may be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board

may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§531. Violation of Rules or Documents (Rule 16)

A. On the board's initiative, or whenever written complaint on an alleged violation of terms of tax exemption rules or documents is received, the assistant secretary for the Office of Commerce and Industry may cause to be made a full investigation on behalf of the board and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractees and complainants. Results of the investigation will be presented to the board.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§533. Reporting Requirements for Changes in Operations (Rule 17)

A. The Office of Commerce and Industry is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any changes constitutes a breach of contract and, with approval by the board, shall result in restriction or cancellation of same.

B. The manufacturing establishment shall file annually with the assessor of the parish in which the manufacturing plant is located, a complete taxpayer's report on forms furnished by that assessor in order that the exempted property may be separately listed on the assessment rolls.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§535. Sale or Transfer of Exempted Manufacturing Establishment

A. In the event a contractee should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change

the name of the contractee. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994).

§537. Miscellaneous Capital Additions

A. Tax exemption applications on miscellaneous capital additions totaling less than \$3,000,000 may be filed in the following manner:

1. Capital Additions Totaling less than \$3,000,000 in One Calendar Year

a. Not later than March 31 of each year, applications for tax exemption shall be filed on the prescribed form with the Office of Commerce and Industry, listing the nature, the date and the amount of miscellaneous capital additions completed during the preceding calendar year, and deduction therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer. An application fee shall be submitted with the application based on the following range of taxes to be exempted:

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

b. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

c. Since the assessment date for Orleans Parish is August 1, applications for tax exemption on miscellaneous capital additions in Orleans Parish should be filed not later than October 31 and should cover items completed since August 1 of the preceding year.

2. Capital additions reaching an accumulated total of \$3,000,000 during the calendar year.

a. Application for tax exemption on the prescribed forms must be filed with the Office of Commerce and Industry whenever miscellaneous capital additions on which exemption is to be requested reach an accumulated amount of \$3,000,000. An application fee shall be submitted with the application based on the following range of taxes to be exempted:

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

b. The Office of Commerce and Industry reserves the right to return the advance notification, application, Or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§539. Manufacturing Establishment Clarified

A. The Board of Commerce and Industry will consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the State of Louisiana (subject to the limitations stated in Rule 9) and additions for existing manufacturing establishments within the State of Louisiana. Exemptions are granted to the actual owners of buildings which house a manufacturing operation, and/ or facilities which are operated specifically in the manufacture of a product. The Board recognizes two categories of ownership:

1. Owners who engage in manufacturing at said facilities; and

2. Owners who are not engaged in manufacturing at said plant, but who have provided either or both of the following for a predetermined manufacturing establishment.

a. Buildings to house a manufacturing establishment and/or

b. Facilities which consist of manufacturing equipment operated specifically in the manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§541. Office Furniture and Fixtures

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and lodged at the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§543. Portable Equipment

A. Portable equipment is subject to exemption if it is not removed from the exempted property and if such equipment is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased, or used for outside operations.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§545. Relocated Plants

A. Plants moved from one location in the state to another place within the state will be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the old plant.

B. Capital additions for remodeling existing or abandoned or idled manufacturing plants may be exempted. If replacements are made, only the capital expenditures in excess of original cost of parts replaced will be eligible for tax exemption.

C. Exemption may be granted on cost of rebuilding partially or completely destroyed plants, but only on the amount in excess of the original cost of parts destroyed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§547. Secondhand Items

A. Secondhand items are considered eligible for tax exemption provided they are not on the active Louisiana assessment rolls and provided they have not been previously granted tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§549. Assessed Property

A. The Board of Commerce and Industry will not consider for tax exemption any manufacturing establishment, or addition thereto, once such establishment or addition has been in operation for a period of six months unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the tax rolls. If the establishment or addition is on the tax rolls the Board of Commerce and Industry will consider granting tax exemption if the assessor and the Louisiana Tax Commission both agree in writing to remove the establishment or addition from the tax rolls should the tax exemption be granted.

B. Under no circumstance will the Board of Commerce and Industry consider for tax exemption any manufacturing establishment or addition thereto once ad valorem taxes have been paid on said establishment or addition.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§551. Land

A. The land on which a plant is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§553. Inventories

A. Inventories of raw materials used in the course of manufacture and inventories of finished products are not eligible for tax exemption. However, materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the plant. Some examples of these are: ammonia in a freezing plant, solvent in an extraction plant and catalyst in a manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§555. Extension of Time

A. The Assistant Secretary of the Office of Commerce and Industry is authorized to grant an extension of up to six months in the time for completion of construction contained in a tax exemption contract. Further extensions must be approved by the State Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§557. Effective Date of Contract

A. The owner of a manufacturing establishment shall carefully document the beginning date of effective operation of the new plant or added facility, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective operation has begun or construction is essentially complete, whichever occurs first. The Assistant Secretary of the Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contracts, which shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever was sooner.

B. As the assessment date for Orleans Parish is August 1, the effective date of contracts for plants located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§559. Affidavit of Final Cost

A. Within six months after construction has been completed, the owner of a manufacturing establishment shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost for an on-site inspection that will be conducted by a representative of the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities exempted in the project will be submitted in order that the exempted property may be clearly identifiable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§561. Renewal of Tax Exemption Contract

A. The initial period of tax exemption is limited to five calendar years. If renewal for an additional five calendar year period is desired an application must be filed on the prescribed forms with the Office of Commerce and Industry at least 90 days before the expiration of the initial contract. The Office of Commerce and Industry shall notify the owner of this requirement in sufficient time for him to apply for the renewed exemption. Upon proper showing of full compliance with the contract of exemption the contract shall be approved by the Board of Commerce and Industry for an additional period not to exceed five calendar years.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§563. Violation of Rules or Documents

A. On the Board's initiative or whenever written complaint on violation of terms of tax exemption rules or documents is received, the Assistant Secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the Board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractees. If the investigation substantiates a violation he may present the subject contract to the Board for formal cancellation.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§565. Changes in Tax Exemption Contract

A. The Office of Commerce and Industry is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. the retirement of any portion of exempt equipment or the abandonment of operations. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Commerce, Office of Commerce and Industry, 12:663 (October 1986).

Chapter 7. Enterprise Zone Program

§701. Scope

A. Intent of Program. To stimulate business and industrial growth in depressed areas of the state which are designated as enterprise zones; and, in certain other areas designated as Economic Development Zones by providing tax incentives for new jobs created in these areas and by providing assistance to businesses and industries.

B. Description of Program

1. Louisiana's Enterprise Zone Program is a package of tax credits and other incentives to businesses locating in specially designated Enterprise Zones or Economic Development Zones in both urban (1990 census population of 75,000 or greater) and rural (1990 census population of less than 75,000) parishes. Enterprise Zone incentives are in addition to many other state-sponsored incentives such as the Ad Valorem (property) tax exemption for manufacturing facilities and equipment, and the cost-free employee training program.

2. An Enterprise Zone is an officially designated area of high unemployment, low income and/or an area where a large number of residents are receiving some form of public assistance. For purposes of R.S. 51:1787.B.(4)(c) and D.(4)(b) the term "some form of public assistance" shall include any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependant upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their employment.

3. An Economic Development Zone is a geographic area of contiguous real, properties, defined by a visible boundary, designated as such by the state or the local governmental subdivision in which it is located and approved by the Board of Commerce and Industry. The location of an Economic Development Zone once defined is permanent (cannot be moved or swapped) and is owned or operated by the state or a political subdivision of the state or

operated by an entity created by the state or a political subdivision of the state. Economic Development Zones will have been created by state statute and are defined to include the following:

- a. industrial park;
- b. business park;
- c. airport or air park;
- d. research park;
- e. research and development park;
- f. downtown development district;
- g. former federal facility (such as an old military base, etc., not a single building or small grouping of prior federally owned and occupied buildings. The immediate previous occupant of this facility must have been a federal governmental entity); and
- h. port (zone covers all contiguous real property actually owned by that port).

4. Each Economic Development Zone will submit an annual report which will compare activity in the last completed year to the previous year's activity.

5. Any business, except residential type development, can qualify for Enterprise Zone tax incentives. Manufacturing plants, service industries and commercial operations are equally eligible. Companies moving into an Enterprise Zone or Economic Development Zone and companies located in an area at the time the region is declared an Enterprise Zone or Economic Development Zone can both apply for benefits providing the minimum of five net new additional jobs are added (to the state within the first two years).

6. All parishes that have a 1990 population of less than 50,000 will be allowed to designate one additional Enterprise Zone which would not otherwise qualify, however, the additional zone's boundary must be contiguous with a (one) 1990 census tract (or block numbering area) block group boundary.

C. Incentives

1. A one-time tax credit of \$2,500 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against the income tax or franchise tax for the succeeding 10 taxable years, or until the entire credit is used, whichever occurs first.

2. In lieu of the tax credit of \$2,500, aviation and aerospace industries as defined in the 3720's and 3760's Standard Industrial Classification (SIC) manual are eligible for a one-time tax credit of \$5,000 for each net new (Louisiana resident) employee (minimum of five within the first two years of the contract period) added to the payroll. The credit may be used to satisfy state income and corporate

franchise tax obligations. If the entire credit cannot be used in the year created, the remainder may be applied against income tax or franchise tax for the succeeding 10 years, or until the entire credit is used, whichever occurs first.

3. An additional \$2,500 tax credit is available to employers who hire Aid to Families with Dependent Children (AFDC) recipients. This tax credit is in addition to the \$2,500 for new jobs created. The AFDC participant must receive compensation which will disqualify such person from continued participation in the AFDC program and must be employed for two years to generate the additional tax credit. An employee shall be limited to two years participation under this program. This credit may be applied to any state income or franchise tax liability and shall be used for the taxable year in which the increase in average annual employment occurred. An employer shall not obtain a credit for more than 10 employees in the first year of participation in the program. An employer receiving this additional credit is limited to 10 years participation.

4. Refunds can be made of sales and/or use taxes, imposed by the state and imposed by its local governmental subdivisions, upon approval of the governing authority of the appropriate municipality, parish, or district, where applicable, on all eligible purchases during the specified construction period (and transfers into Louisiana) of the material used in the construction of a building, any addition or improvement thereon and/or on equipment used exclusively on that site in the operation of that business enterprise. Refunds made by local governmental subdivisions can only be made of those sales/use taxes that are not dedicated to the repayment of a bonded indebtedness (sales/use taxes dedicated to schools are not refundable). Final requests for the payment of any refund must be filed, with the state (Department of Revenue and Taxation) and/or its local governmental subdivision no later than six months after the project's completion or six months after the date of the governor's signature on the contract, whichever is later.

D. Qualifications

1. To qualify for Enterprise Zone tax incentives in a parish designated as urban, a company must be located in a designated Enterprise Zone and must certify that a minimum of 35 percent of its new or expanded work force meet the requirements of §709.

2.a. In the case of Economic Development Zones or Enterprise Zones located in a parish designated as rural, a minimum of 35 percent of its new or expanded work force must meet the requirements of §711.

b. These requirements apply equally to companies moving into an Enterprise Zone or Economic Development Zone for the first time and to those which may have been located in an Enterprise Zone or Economic Development Zone at the time it was designated as such.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1791 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives

Division, LR 17:252 (March 1991), amended LR 22:446 (June 1996).

§702. Future Contract Availability

A. All businesses that held a valid contract for Enterprise Zone benefits prior to January 1, 1996, may apply for additional contracts for all location(s) which had a prior contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5) et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, amended LR 22:447 (June 1996).

§703. Use of Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry request businesses and manufacturers receiving tax relief and their contractors, to consider giving preference to Louisiana manufacturers, suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 11 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§705. Endorsement Resolution

A. Applicants who intend to recover local sales/use taxes must submit a resolution, stating that fact, from the taxing body(s) which intends to refund sales/use taxes for the project, with their application for state benefits. If the local governmental subdivision wishes to participate by rebating their applicable sales taxes, this resolution shall be passed by the local governmental subdivision prior to the applicant receiving approval of that application from the Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:295 (March 1997).

§707. Documentation of Location

A. The business must document its location within the boundaries of a particular Enterprise Zone or Economic Development Zone by furnishing a 1990 U.S. Census map with the site's location clearly marked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1795(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§709. Qualified EmployeesC Urban Zones

A. A business located in an urban parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. are living in an Enterprise Zone in the same parish as the location of the business;
2. are living in an Enterprise Zone in a contiguous parish if the business has 500 or more employees;
3. were receiving some form of public assistance prior to employment (see definition of "some form of public assistance" §702.B.2); or
4. were considered unemployable by traditional standards, or lacking in basic skills.
 - a. The term "traditional standards" means anyone who qualifies as physically challenged.
 - b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below grade level 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business's entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all those locations in calculating the total employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated In accordance with R.S. 51:1795(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:447 (June 1996).

§711. Qualified EmployeesC Rural Enterprise Zones and Economic Development Zones

A. A business located in an Economic Development Zone or a rural parish Enterprise Zone and receiving the benefits of this Chapter must certify that at least 35 percent of its new employees are Louisiana residents who:

1. live in the same parish as the location of the business; or

2. were receiving some form of public assistance prior to employment; or

3. were considered unemployable by traditional standards, or lacking in basic skills.

a. The term "traditional standards" means any one who qualifies as physically challenged.

b. The term "lacking in basic skills" means anyone who exhibits reading or writing or math skills below Grade 8.9.

B. An Annual Employee Certification must be filed by February 15, on all active contracts, if the business is to continue to qualify for additional benefits under this Chapter.

C. Employee count will be taken from the business's entire contiguous site for the purposes of calculating the tax credits generated. If the business has more than one site within the metropolitan area where the project is located, then the department may consider the total employee count at all these locations in calculating the employee credits generated.

D. Monthly totals of permanent full-time employees will be averaged over a minimum of six months to determine the number of tax credits generated. Part-time employees may be averaged-in with the full-time employees after having completed a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Generally, the number of employees reported to the Louisiana Department of Labor will be used to calculate this average monthly total.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§713. Reserved.

§715. Arbitrary Termination of Employees

A. The board will not accept an application from a business which has terminated employees and rehired them or others in order to qualify for the benefits of this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§717. Items Eligible for Sales/Use Tax Refund

A. Only capitalized material used in the construction that becomes a part of a building, or any addition or improvement thereon, for housing any legitimate business, and capitalized machinery and equipment purchased, or transferred into Louisiana, within the construction period and used exclusively on that site and in that business will be considered eligible for refunds of sales/use taxes.

1. A partial listing of ineligible items on which sales/use taxes are not refundable are: per diem, labor, service contracts/labor, storage, freight, portable toilets or radios, utilities, permits and fees, office supplies, construction consumables (blades, drill bits, PVC sheeting, tape, gloves, dusk masks, etc.), all leases and rentals.

2. Lease-purchases are eligible for a sales/use tax refund if the sales/use taxes are paid at the beginning of the lease period and a copy of the lease-purchase agreement is sent to the Louisiana Department of Revenue and Taxation, for review, prior to the application being presented to the Board of Commerce and Industry for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1795(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:448 (June 1996).

§718. Advance Notification, Timely Filing

A. An advance notification received by the Office of Commerce and Industry after the beginning of the project's construction, will obligate the company to file written reason(s) for the late filing. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits will not be accepted as a valid reason for waiving the timely filing requirement and will result in the return of the filing fee. However, the board will accept reasons that fall within the following two categories in determining if it will consider waiving the late filing:

1. events beyond control of the applicant caused the late filing; or

2. there was some documented fault or error on the part of the Business Incentives Division that caused the applicant's late filing.

B. A waiver of late filing of an advanced notice will allow the applicant to proceed as if the filing was timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1796(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development Office of Commerce and Industry, Business Incentives Division, LR 23:295 (March 1997).

§719. Filing of Applications

A. An advance notification of intent shall be filed prior to the beginning of construction. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. All incentives for the same project must be applied for on one advance notice and be identified by one project number. (It is not acceptable, for example, to apply for enterprise zone benefits and use the same project in a miscellaneous capital addition application for the industrial tax exemption (Ad Valorem) program. Both incentives must be applied for on one advance prior to the beginning of construction.) An advance notification, lacking a proper application, will expire two years after the "construction ending date" shown on the advance notification unless a

written request for extension is received by the department prior to that date. Advance notices that do not meet program eligibility requirements will be rejected.

B. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, within three months after completion of construction or the beginning of operations, whichever is later.

C. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins or the first day that materials or equipment purchased for that project are received. Where there is no construction, the first day on which a new hire is made in connection with the project shall mean "beginning of construction" for the purposes of this Section.

D. Submission of Application Fee

1. An application fee shall be submitted with the application based on the following formula:

Fee = Total Estimated Tax Relief H.002
Total Estimated Tax Relief + State Sales/Use Tax
Refund + Local Sales/Use Tax Refund + Jobs Credit*

Estimated Tax Relief H.2% (.002) and
Application Processing Fee

(Anticipated from this application)

2. An application fee correction will be due if a project's scope is increased which would have resulted in a minimum of \$100 more fee than what has already been submitted, unless the maximum has been paid.

*Jobs credit This amount is either the total amount you calculate by multiplying all the new jobs created within the five-year contract period by \$2,500 (\$5,000 for aerospace or AFDC credits that will be claimed) or the total income and franchise tax liability you anticipate for the next 10 years, whichever is less.

NOTE: Minimum Application Processing Fee \$200.
Maximum Application Processing Fee \$5,000.

3. All fees shall be made by check payable to the Louisiana Office of Commerce and Industry.

E. The business shall file, on the prescribed form, an affidavit of final cost showing a complete listing of building(s) and equipment and the cost of each item on the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of Commerce and Industry whichever is later. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming refunds in the project will be submitted in order that the property may be clearly identifiable.

F. The Office of Commerce and Industry reserves the right to return the advance notification, application, or

affidavit of final cost to the applicant if the estimated tax relief or the fee submitted is incorrect. That document may be resubmitted within 30 days with the correct fee without penalty.

G. The advance notification, application, and the affidavit of final cost will not be considered officially received or accepted until the appropriate fee is submitted. Processing fee, for advance notifications, applications, or affidavits of final cost which have been received and accepted, will not be refundable.

H. Applications must be submitted to the Office of Commerce and Industry, Business Incentives Division at least 60 days prior to the Board of Commerce and Industry meeting where it is intended to be heard.

I. The applicant proposing a project with a construction period greater than two years is required to separate the project into phases, with no phase having a over a two-year construction period. Each construction phase shall require a separate application to be filed with the department. The applicant must comply with §735.A, requiring the creation of five new jobs on each application filed on a project. An application fee shall be submitted with each application filed based on the fee schedule in §719.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1993), LR 11:95 (February 1985), LR 12:660 (October 1996), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

§721. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

A. The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue and Taxation for their review. The secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the secretary of Revenue and Taxation shall submit a letter-of-no-objection in lieu of a letter of recommendation) in writing to the assistant secretary for Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§723. Application Shall be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry, Business Incentives Division Shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic

Development and Revenue and Taxation and, if applicable, the endorsement resolutions outlined in §705 and shall make recommendations to the Board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1993), LR 11:95 (February 1985), amended by the Department of Economic Development, Office Of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

§725. Board of Commerce and Industry Enters into Contract

A. Upon approval of the application, the Board of Commerce and Industry may enter into contract with the applicant for refunds of the taxes allowed by R.S. 51:1781-1791. A copy of the contract shall be sent to the Department of Revenue and Taxation and the local governmental subdivision's taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§727. Refunds of Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors. The refund of state sales/use taxes will be effected by the Department of Revenue and Taxation. Refunds will be secured by the filing of affidavits with the Department of Revenue and Taxation, Sales Tax Section, which must include the following:

1. a listing of purchases of eligible property that is intended to be used permanently on the project site and the contract number of the project. The listing must include a brief description of each item, the vendor's name, date of the sale, sales price and the amount of state sales/use tax paid. The items included in the listing must have been purchased by the owner of the project, or by a builder or other party that has contracted with the owner to provide materials and services for the project;

2. a certification that the materials included in the listing are reasonably expected to qualify for a refund under provisions of the statute; and

3. a certification that the sales/use taxes have actually been paid on the items included in the listing.

B. The affidavit may be filed on official Department of Revenue and Taxation "Claim for Refund" forms or on other forms prepared by the applicant. After the Department of Revenue and Taxation has verified the information on the application, a refund check will be issued for the amount of state sales/use taxes paid.

C. Local sales/use tax refunds will be handled in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1795(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:449 (June 1996).

§729. Businesses with Contracts must File State Franchise and Income Tax Returns

A. Businesses that have eliminated their Louisiana Income and/or Franchise tax liability by applying tax credits earned under this program shall file the same required forms and returns with the Department of Revenue and Taxation as would be required if no credits were taken. Each annual return will have the contract number, a certification attached showing the annual increase in employment, as determined by the company's average monthly employment (certified by the Office of Commerce and Industry) as reported to the Louisiana Department of Labor, and the unused credits from previous years. If total tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the return. Limited Liability Companies, Subchapter S Corporations, etc. must have the name of all owners shown in the contract in order for tax credits to flow through to said owners.

B. Partnerships and sole proprietorships shall file the same returns as would be required if the tax credits had not been granted. In addition, each return must include a profit and loss statement for a business claiming enterprise zone credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§731. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall determine if a full investigation is to be made on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation appears to substantiate a violation, the assistant secretary will present the subject contract to the board for formal board action. The businesses with contracts shall then remit, to the state, any and all sales tax refunds and taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§733. Affidavits Certifying Eligibility Filed Annually

A. On February 15 of each year, all businesses with active Enterprise Zone contracts are required to file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §709 or §711. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further tax credits will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after cancellation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 8:230 (May 1982), amended LR 9:544 (August 1983), LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:450 (June 1996).

§735. Job Creation RequirementsC Five New Jobs Must Be Created

A. For a business to qualify for the benefits of this Chapter, there must be an expansion in the total number of employees. A minimum of five new jobs credits must be generated within the first two years of the contract period. The "base number" from which the number of new jobs will be determined shall meet one of the following:

1. the number of employees that an applicant has on the day before the effective date of the contract. (The effective date will be either the day that the advance notice was received by the Business Incentives Division or the date that construction begins on the project shown on the advance notice but not earlier than the date received unless a waiver of timely filing has been approved by the board); or

2. the highest number of employees that was certified under an Enterprise Zone contract that was still valid the day before the effective date on the anticipated new Enterprise Zone contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

§737. Reserved.**§739. Multi-Tenant Operations**

A. In the case of a facility where there are more than one occupant/tenant, an owner applicant for the benefits of this Chapter must either occupy a minimum of 33 percent of the total floor area of the buildingC or the tenants are businesses that are new to the state, or the tenants are Louisiana businesses that are increasing their number of locations within Louisiana with this location, or the tenants are moving from another Louisiana location and will generate a minimum of five new job credits per §735.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§741. Alternate Designation of Enterprise Zones

A. A local governmental subdivision requesting the alternate designation (swap) of an Enterprise Zone must provide valid reason(s) for requesting the move and must have the approval of the Board of Commerce and Industry. The relocation of an Enterprise Zone will be on a one-time basis only unless there are extenuating circumstances which must have approval of the Board of Commerce and Industry. All requests to the Board of Commerce and Industry for the movement of an eligible enterprise zone must be accompanied by a single map showing the location of the old and the new zone areas. The following information must also accompany a request for a swap of enterprise zones:

1. the distance between the new zone location and the old location;
2. the number of workers who were or will be hired from the old zone location by the business for which the swap is made; and
3. the distance of the new zone to the closest other zone.

B. In order for an applicant to meet the requirements of §709, those employees who are residents of an originally designated 1990 Census Tract-Block Group which was moved by virtue of a relocation may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the Board of Commerce and Industry shall be the date of passage affixed to the resolution by the local governing authority requesting the move.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), LR 13:289 (May 1987), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§743. Appeals and Petition Procedure

A. Applicants who wish to appeal an action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry, Business Incentives Division at least one month prior to the meeting of the Board of Commerce and Industry or any of its committees during which their appeal will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the Office of Commerce and Industry, Business Incentives

Division at least one month prior to the meeting of the board or any of its committees in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 17:252 (March 1991), LR 22:445 (June 1996), amended by the Business Incentives Division, LR 23:296 (March 1997).

§745. Income and Franchise Tax Requirements

A. In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five-year income and franchise tax liability must be provided by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1996), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§747. Exclusion of Residential Developments

A. A business engaging in residential-type development (construction, selling or leasing of single-family/multi-family dwellings, apartment buildings, condominiums, town houses, etc.) shall not be eligible for the benefits of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1795(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:544 (August 1983), amended LR 11:95 (February 1985), LR 12:660 (October 1986), amended by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), LR 22:451 (June 1996).

§749. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices

A. No local governmental subdivision shall charge any fees or require any employment practices that conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:451 (June 1996).

§751. Application Procedures

A. Applicants and/or their representatives will be notified of the date of the Screening Committee and board meeting at which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Screening Committee or board might have about the information contained in the

application. In the event there is not a representative present, the application may be deferred or denied.

B. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days. The state will complete the execution. A fully executed original will then be forwarded to the applicant, the Louisiana Department of Revenue and Taxation and a copy sent to the proper local governmental taxing authority(s).

C. The taxing authorities of the local governmental subdivision(s) issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax. The applicant will be contacted by the staff of the Department of Revenue and Taxation who will inform the applicant on the proper procedures to follow in order to obtain the state sales/use tax refund.

D. The sales/use tax refund portion of the contract will only be valid for the duration of the construction period as indicated in the application.

E. The business shall file, on the prescribed form, an Affidavit of Final Cost showing complete listing of building(s) and equipment and cost of each item of the project, together with a fee of \$100, for the inspection which will be conducted by the Office of Commerce and Industry staff. This affidavit is due to be filed either within six months after the completion of construction or when the signed original contracts are returned to the Office of Commerce and Industry which ever is later.

F. An annual employee certification report must be filed (§333), certifying compliance with either §709 or §711. This report will be filed annually by February 15. The Office of Commerce and Industry will supply the necessary forms and instructions to complete them.

G. Notification of any change which may affect the contract should be made to Office of Commerce and Industry. This includes, but is not limited to, changes in the ownership or operational name of the business holding a contract or the suspension, closing or abandonment of operations. Failure to report within three months can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1785(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce, Financial Incentives Division, LR 17:252 (March 1991), amended LR 22:451 (June 1996).

Chapter 9. Restoration Tax Abatement Program

§901. General

A. Intent of Law. To encourage the expansion, restoration, improvement, and development of existing commercial structures and owner-occupied residences in downtown, historic, and economic development districts. To provide for the development and improvement of local

communities, encourage the fullest use of underutilized resources, and enhancement of the tax base.

B. Program Description. The Restoration Tax Abatement Program provides to commercial property owners and homeowners who expand, restore, improve or develop an existing structure in a downtown development district, economic development district or historic district (the "project"), the right for five years after completion of the work, to pay ad valorem taxes based on the assessed valuation of the property for the year prior to the commencement of the project.

1. The application is subject to approval by the local governing authority, the State Board of Commerce and Industry, and the governor. Assessment of the improvements, made by the project to the property, is deferred for five years by a contract entered into with the Board of Commerce and Industry. The contract may be eligible for renewal, subject to the same conditions, for an additional five years. The tax abatement is now available if property taxes have been paid on the improvements made by the project. If the property is sold, the contract may be transferred, subject to local government and board approval.

2. The program is administered by the Louisiana Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division. For more information contact the Restoration Tax Abatement Program Administrator, Box 94185, Baton Rouge, Louisiana 70804-9185. Telephone 225/342-5398.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§903. Time Limits for Filing Application

A. The applicant shall submit an "Advance Notification" on the prescribed form prior to the beginning of construction. An advance notification fee of \$100 shall be submitted with the advance notification form. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

B. Application for tax exemption should be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, Louisiana 70804-9185 on the form prescribed prior to the beginning of construction. Failure to file an application prior to construction may result in the application being denied.

C. An application fee (effective May 4, 1988) shall be submitted with the application based on the following:

1. 0.2 percent of the estimated total five-year property tax exemption;
2. minimum application fee is \$200, maximum application fee is \$5000;

3. please make checks payable to: Louisiana Office of Commerce and Industry.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, may not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§905. Application Requirements

A. The application must be complete (any exceptions must be authorized by C & I staff). All sections of the application form RTA1 must be filled in. Under Section 5, submit at least a one paragraph detailed description of the project with some historical overview, if applicable. For "ESTIMATED NO. OF JOBS," list only the net new permanent jobs which will be created as a result of the project being applied for; do not list permanent jobs which existed prior to the beginning of the project. In addition all applicable addendum documentation, listed under "Project Documentation," must be received. The application will be returned to the applicant if the required information is not received.

B. The expansion, restoration, improvement or development must be made to an existing structure and must be located in a downtown development district, economic development district or historic district.

C. If the construction period is longer than two years, the project must be divided into two-year phases, and a separate application must be filed for each two-year increment. A separate application must be filed for each structure being restored, renovated, improved or developed. Exceptions to this Paragraph must be approved in advance by the authorized representative of the board, and approved by the board.

D. The expansion, restoration, improvement or development of a certified historic structure shall also be required to meet the National Park Service requirements for restoration projects known as the secretary of the Interior's "Standards for Rehabilitating Historic Structures"; and, as interpreted by the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation. As used in this Subsection, the phrase "certified historic structure" means any building including its structural components, which:

1. is listed on the National Register of Historic Places; or

2. is located in a registered historic district and is listed as a contributing element of that district in the National Register records under authority of the secretary of the Interior.

E. The Board of Commerce and Industry will not consider for tax exemption any expansion, restoration, improvement or development project if substantial completion of a commercial project occurred prior to October 15, 1982. For an owner-occupied residence, construction must not have been started prior to September 7, 1990.

F. Pursuant to R.S. 47:4315.A.(4), under no circumstances will the Board of Commerce and Industry consider an application for abatement on any project for expansion, restoration, improvement or development once ad valorem taxes have been paid on the basis of an assessed valuation which reflects the improvements made by the project.

G. When the expansion, restoration, improvement, or development is to be made to an owner-occupied residence, a contract of exemption shall not be available unless a minimum rehabilitation cost equal to or greater than 25 percent of the assessed valuation of the improvements located on the property for the year prior to the commencement of the expansion, restoration, improvement, or development of the owner-occupied residence is incurred by the owner and such expansion, restoration, improvement, or development is completed within a 24-month period. "Owner-occupied residence" means any structure occupied by the owner and used principally for residential use including condominium units, duplexes, and other multiple residence structures. Owner-occupied residence projects shall not have been started prior to September 1, 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§907. Project Documentation

A. Application is to be filed with the Office of Commerce and Industry. Please return four application forms (RTA1) completed, signed and notarized. The application should include a complete description of the project. Attach additional pages if necessary. In addition, two complete sets of the addendum documentation, Paragraphs 1-6 and either Paragraphs 7 or 8 of Subsection B are required for all projects. For projects involving owner-occupied residences Paragraphs 9 and 10 must also be included. The Office of Commerce and Industry may request additional information.

B. The following addendum documentation must be submitted with the application: (Please denote each document with one of the numbers below)

1. Proof of Ownership: Act of sale or option to acquire the property;

2. a legal property description (suitable for insertion into the exemption contract if necessary), a plot map; a copy of the building permit issued for the project;

3. picture of the structure before beginning the project and a rendering of the structure as it will appear after completion of the project;

4. names and addresses of all owners (the general partner(s) or, the principal stockholders of the corporation);

5. the assessed value of the structure only (improvements) and the taxes paid on the structure only;

6. a copy of the tax invoice for the year prior to commencement of the project from the parish assessor;

7. certification from the local governing authority that the structure is in a downtown development district, an historic district, or an economic development district specifically designated as such for this program;

8. if the project is a "certified historic structure" as defined in §905.B, Certification from the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation that the project meets the National Park Service requirements for restoration projects known as The Secretary of the Interior's "Standards for Rehabilitating Historic Structures." This is mandatory if the project is located in downtown New Orleans or downtown Shreveport;

9. a statement certifying that the minimum rehabilitation cost incurred to the owner-occupied residence project will be equal to or greater than 25 percent of the assessed valuation of the improvements located on the property prior to the commencement of the expansion, restoration, improvement, or development; and

10. a statement certifying that the owner-occupied residence project will be completed within a 24-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department Of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§909. Local Governing Authority Certification and Approval

A. R.S. 47:4314.B, requires the exemption to be certified and approved by each local governing authority which is defined in R.S. 47:4313(5):

"'Local governing authority' means the governing authority of the parish in which the downtown, historic, or economic development district is located unless the district is located within a municipality, in which case 'local governing authority' shall mean the governing authority of the municipality. If the district is located partly in a municipality, 'local governing authority' shall mean the governing authority of the parish and the governing authority of the municipality."

B. Upon receipt of the application, the local governing authority shall notify each tax recipient body affected by the

contract for a limited exemption and shall make available to each body the application and all supporting documents.

C. The parish or municipal governing authority shall certify that the property on which the expansion, restoration, improvement of development is being made is located within an established downtown, historic, or economic development district, whether established by a local governing authority or in accordance with law. This certification shall be submitted to the Office of Commerce and Industry with its decision to approve or disapprove.

D. The local governing authority shall determine whether the applicant's land usage meets the definition of "commercial property" based on their zoning ordinance, land use plan, downtown or economic revitalization plan, or any other development code and shall certify that the property meets their criteria. This certification shall be submitted to the Office of Commerce and Industry along with their recommendation.

E. Before notifying the board of its approval or disapproval of the application, the local governing authority shall conduct a public hearing. Notice of the time and place of the hearing shall be published at least twice in the official journal of the local governing authority, and at least 10 days shall elapse between the first publication and the date of the hearing. Each affected tax recipient body shall be given written notice of the hearing at least 10 days prior to such hearing. After such hearing, the local governing authority shall determine whether to approve or disapprove the application.

F. The local governing authority shall, within 60 days after receipt of the application from the Office of Commerce and Industry, file with the department a statement of its decision to approve or disapprove the application, the reasons therefor, and any supporting documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§911. Effective Date of Contract

A. The owner of the existing structure or structures, shall carefully document the beginning date of the effective use of the structure, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially completed, whichever occurs first. The Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contract, which shall be December 31 of the year in which effective use of the structure began or construction was essentially complete, whichever was sooner.

B. As the assessment date for Orleans Parish is August 1, the effective date of contract for a structure located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§913. Affidavit of Final Cost

A. Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form together with a fee of \$100 for the inspection which will be conducted by the Office of Commerce and Industry. (Make check payable to the Office of Commerce and Industry.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§915. Reports to Parish Assessor

A. The property owner agrees to file annually with the assessor of the parish in which the structure is located any taxpayer's report required by law on forms furnished by the assessor in order that the exempted property may be separately listed on the assessment rolls. Notwithstanding the fact, taxes will be collected on the exempt property during the period of exemption at the assessed valuation of the property the year prior to the commencement of the expansion, restoration, improvement, or development of the property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§917. Contract Can Be Transferred

A. If the property for which the limited exemption has been granted is sold the limited exemption may be transferred for the remainder of its term to the new owner, provided such transfer is approved by the local governing authority, the Board of Commerce and Industry, and the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§919. Violation of Rules or Documents

A. On the board's initiative or whenever a written complaint or violation of terms of the tax exemption rules or contract is received, the assistant secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or other pertinent records or other information from the contractee. If the investigation substantiates a violation, he may present the subject contract to the board for formal cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§921. Contract Renewal

A. Effective January 1, 1991, contracts may be renewed, subject to the same conditions, for an additional five years extending such right for a total of 10 years from completion of the work.

B. In order to be eligible for renewal of an existing contract the Project Completion Report and affidavit of final cost, contract addendum documents, must have been filed for the original contract; taxes cannot have been paid on the improvements pursuant to R.S. 47:4315.A.(4); and a renewal application form must be submitted. The following documentation should be submitted:

1. three copies of the application, form RTA1, marked "RENEWAL," containing current data;

2. a written, notarized certification (three copies) from the applicant, referencing the original application/contract number, that "taxes have not been paid on improvements exempted under contract number (number), for (owner name), pursuant to R.S. 47:4315, Paragraph A.(4) and the Restoration Tax Abatement Program rules"; and

3. a renewal fee check for \$50, payable to the Office of Commerce and Industry.

C. The same approval process, as used for the original application and contract, will be followed for renewal contracts. Applications must first be filed with the Office of Commerce and Industry. They will then be sent to the local governing authority for approval. If approved by the local governing authority, the application will be submitted to the Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

Chapter 11. Quality Jobs Program**§1101. General**

A. Intent of Law. To provide incentive tax credits to certain business establishments which qualify as a basic industry.

B. Program Description

1. The qualified establishment must be a basic industry with annual gross payroll for new direct jobs equal to or exceeding \$1,000,000 within three years of the anticipated date on which the establishment will first qualify for the incentive tax credit.

2. The amount of the incentive tax credits must be directly related to the new direct jobs created as a result of the qualified establishment locating in the state. The incentive tax credits cannot exceed the estimated net direct benefits which will accrue to the state as a result of the establishment locating in the state.

3. Approval by the Board of Commerce and Industry, the secretaries of the Department of Labor and the Department of Revenue and Taxation, and the governor is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996).

§1103. Definitions

A. The following words or terms as used in this Chapter shall have the following meaning, unless a different meaning appears from the context.

Basic Industry

a. manufacturing, as defined or classified under Division D of the Standard Industrial Classification (SIC) Manual, latest version; administrative and auxiliary services which are assigned a one-digit auxiliary code in the SIC Manual of 1, 2, or 3; if the business is assigned the one-digit auxiliary code of 3, the business qualifies only if 75 percent of the inventory processed through such warehouse is shipped out of state; or the following, if an establishment classified therein has or will have within one year, sales of at least 75 percent of its total sales, as determined by the Incentive Approval Committee to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or to the federal government:

i. motor freight transportation and warehousing, as defined or classified under Major Group 42 of the SIC Manual, latest version;

ii. transportation by air, as defined or classified under Major Group 45 of the SIC Manual, latest version;

iii. arrangement of passenger transportation, as defined or classified under Industry Group 472 of the SIC Manual, latest version;

iv. arrangement of transportation of freight or cargo, as defined or classified under Industry Group 473 of the SIC Manual, latest version;

v. insurance carriers, as defined or classified under Major Group 63 of the SIC Manual, latest version;

vi. mailing, reproduction, commercial art and photography, and stenographic services, as defined or classified under Industry Group 733 of the SIC Manual, latest version;

vii. services to dwellings and other buildings, as defined or classified under Industry Group 734 of the SIC Manual, latest version;

viii. miscellaneous equipment rental and leasing, as defined or classified under Industry Group 735 of the SIC Manual, latest version;

ix. personnel supply services, as defined or classified under Industry Group 736 of the SIC Manual, latest version;

x. computer programming, data processing, and other computer-related services, as defined or classified under Industry Group 737 of the SIC Manual, latest version;

xi. miscellaneous business services, as defined or classified under Industry Group 738 of the SIC Manual, latest version;

xii. medical and dental laboratories, as defined or classified under Industry Group 807 of the SIC Manual, latest version;

xiii. engineering, architectural, and surveying services, as defined or classified under Major Group 87 of the SIC Manual, latest version;

xiv. water transportation, as defined or classified under Major Group 44 of the SIC Manual, latest version;

xv. communication, as defined or classified under Major Group 48 of the SIC Manual, latest version, excepting subgroups 4832 and 4833.

b. In addition to LAC 13:I.1103.A.a above, to be considered engaged in a basic industry the establishment shall offer within 190 days of the date it first qualifies for the incentive tax credit, a basic health benefits plan to all employees who occupy "new direct jobs" in accordance with R.S. 51:2453(l)(b). The basic health benefits plan must provide:

i. at least 50 percent of the premium is paid by the employer;

ii. coverage must provide for basic hospital care which includes, but is not limited to:

(a). in-patient services such as hospitalization, doctor visits in the hospital, any other care such as tests, x-rays, treatments, emergency services, blood, anesthesia, bed and board, drugs, general nursing services, medical and surgical supplies, and out-patient tests 72 hours prior to admission;

(b). out-patient services for surgery;

iii. basic physician care for/but not be limited to such things as annual PAP Smear and immunization shots, but not well visits.

c. Any establishment engaged in the gaming industry shall not be eligible to apply for benefits under this Chapter.

Date the Establishment First Qualifies for the Incentive Tax Credit the date the contract between the Board of Commerce and Industry and the establishment is approved and signed by the governor.

Department for purposes of this Chapter, the Department of Economic Development.

Establishment for purposes of this Chapter, any business entity, including but not limited to a sole proprietorship, limited liability partnership, limited liability company, partnership, corporation, or combination of corporations which have a central parent corporation which makes corporate management decisions such as those involving consolidation, acquisition, merger, or expansion.

Estimated Direct State Benefits the tax revenues projected by the Department of Economic Development to accrue to the state as a result of new direct jobs. The factor used to determine the estimated direct state benefits is 6 percent of the gross payroll associated with the qualifying project. (This factor is widely used by Louisiana state government officials in determining economic impacts, tax projections, etc. The factor was obtained from the Legislative Fiscal Office and is also used by the State Budget Office and statewide by economists who participate in revenue projections and economic impact analyses.)

Estimated Direct State Costs the costs projected by the Department to accrue to the state as a result of new direct jobs. The estimated direct state costs are determined from the current annual per capita state general fund expenditure being made by the state to care for its citizens multiplied by the total number of new state residents resulting from the qualified establishment locating in the state. The direct outlay of additional state funds to the qualified establishment is also a direct state cost. The average annual value of that cost over the useful life of the item purchased or built will be included in this direct cost determination. Such costs shall include but not be limited to the following:

a. the costs of education of new state resident children;

b. the costs of public health, safety, and transportation services to be provided to new state residents;

c. the costs of other state services to be provided to new state residents;

d. the costs of employee training and other state services.

Estimated Net Direct State Benefits the estimated direct state benefits, not including revenues projected to

accrue to municipal and parish governments, less the estimated direct state costs.

Gross Payroll—wages paid for new direct jobs as defined herein.

Incentive Approval Committee—will consist of the following members of the Department: Financial Incentives Division Director, the Deputy Assistant Secretary of the Office of Policy and Research, the Deputy Assistant Secretary of the Office of Commerce and Industry, the General Counsel of the DED, and the Quality Jobs Program Administrator, or their representatives.

Net Benefit Rate—the estimated net direct state benefits computed as a percentage of gross payroll over the five-year contract period; however, the net benefit rate shall not exceed 5 percent. Formula:

Estimated (5 year) Direct State Benefits - Estimated (5 year) Direct State Costs = Estimated (5 year) Net Direct State Benefits

Estimated (5 year) Net Direct State Benefits / (5 year) Estimated Gross Payroll = Net Benefit Rate

New Direct Job—full-time-equivalent employment with a qualified establishment, in a job that previously did not exist in this state prior to the date of approval of the contract by the Board of Commerce and Industry.

Wages—all remuneration for services from whatever source, including commissions, bonuses, cash value of all remuneration in any medium other than cash, dismissal payments and gratuities. The latter two shall be estimated in accordance with the Internal Revenue Code and its rules and regulations. Wages shall not include the following:

a. the amount of any payment with respect to services performed after January 1, 1951 to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employing unit for insurance or annuities, or into a fund to provide for any such payment, on account of:

- i. retirement;
- ii. sickness or accident disability;
- iii. medical and hospitalization expenses in connection with sickness or accident disability;
- iv. death, provided the individual in its employ:

(a). has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premium or contributions to premiums paid by his employing unit;

(b). has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon the termination of such plan or system or

policy of insurance or of his services with such employment unit;

v. a bona fide thrift or savings fund, providing:

(a). such payment is conditioned upon a payment of a substantial sum by such individuals in its employ;

(b). such sum paid by the employing unit cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any 12-month period, except upon an individual's separation from that employment;

vi. any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan of the type described in 26 U.S.C. 125 and referred to in 26 U.S.C. 330(b)(5)(G);

vii. any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such financing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C. 127 or a dependent care assistance program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C. 330(b)(13);

viii. the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under Section 3101 of the federal Internal Revenue Code with respect to domestic services in a private home of the employer or for agricultural labor performed after December 31, 1980;

(a). dismissal payments which the employer is not required by law or contract to make;

ix. the value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ, provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996).

§1105. Qualified Establishment

A. In order to become a qualified establishment under this Chapter the business entity must:

1. be engaged in a basic industry as defined in LAC 13:I.1103.A;

2. have an annual gross payroll for new direct jobs projected by the Department to equal or exceed \$1,000,000 dollars within three years of the anticipated date on which the qualified establishment will receive its first incentive tax credit. The criteria for the projection is defined in LAC 13:I.1109;

3. have a number of full-time employees working an average of 25 or more hours per week in new direct jobs equal to, or in excess of, 80 percent of the total number of new direct jobs;

4. must offer a basic health benefits plan to new plan to new employees.

B. A subunit of an entity may be classified as an establishment if engaged in an activity or service or production of a product which is demonstratively independent and separate from the entity's other activities, services, or products and can function in the absence of any other functions of the entity. Limited interunit overlap of administrative and purchasing functions will not disqualify a subunit from consideration as an establishment by the Department. The "expansion" of a facility which already exists in Louisiana and has an existing contract under this Chapter, must be a "subunit" as defined in this Chapter. An expansion, of an entity without a contract under this Chapter, must be a stand alone operation.

1. The entity shall have a minimum payroll of \$1,000,000 and the subunit shall also have a minimum payroll of \$1,000,000.

2. Subunit of an entity must have an accounting system capable of tracking payroll, expenses, revenue, and production and must continue such an accounting system during the contract period under this Chapter.

3. The entity has not previously had a subunit in Louisiana determined to be an establishment pursuant to this Chapter. Only one subunit of an entity can receive the benefits of this program.

4. The Department will determine on a case-by-case basis, using the parameters established by statute, any circumstances under which a subunit may be considered an establishment and make those recommendations to the Board of Commerce and Industry.

5. The Department must have determined that the subunit will have a probable net gain in total employment within the original five-year contract period.

6. The Department will determine on a case-by-case basis the criteria for determining the period of time within which such gain must be demonstrated and a method for determining net gain in total employment. In order to make these determinations in an impartial and objective manner, the Department will employ nationally recognized standards (ie: the RMA Annual Statement Studies).

C. A qualified establishment cannot be engaged in the gaming industry.

D. If the applicant is determined to be qualified by the Department, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a 10-year period and to estimate the amount of gross payroll for a 10-year period.

E. An expansion may be eligible if they meet the minimum criteria as defined in LAC 13:I.1103.A.1 and 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996).

§1107. Application Fees, Timely Filing

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of \$100, for each program applied for, shall be submitted with the advance notification form.

B. Application for incentive tax credits must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, Louisiana 70804-9185 on the form prescribed. Failure to file an application prior to location or job creation may result in the application's being denied or restricted.

C. An application fee shall be submitted with the application based on the following:

1. 0.2 percent times the estimated total incentive tax credits (see application fee worksheet attached);

2. minimum application fee is \$200, maximum application fee is \$5000 for all financial incentive programs for a single project;

3. make checks payable to: Louisiana Office of Commerce and Industry.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted for eligible projects, shall not be refundable.

E. Applications must be submitted to the Office of Commerce and Industry at least 60 days prior to the next regular scheduled Board of Commerce and Industry Screening Committee meeting at which the application will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996).

§1109. Application Review, Analysis, Evaluation, Determination

A. The Department will assign an application number and review the advance notification form to determine if the establishment qualifies pursuant to §1103.A.

B. The application package must be complete (any exceptions must be authorized in writing by the Department). All sections of the application form must be

filled in. If the application is incomplete, additional information may be requested prior to further action by the Department. The appropriate application fee must accompany the application package (see fee schedule in §1107.C).

C. **Program Qualification.** The Department shall determine that the establishment or a subunit qualifies as a basic industry which will have a minimum of \$1,000,000 gross payroll dollars within three years of the anticipated date on which a establishment will first qualify for the incentive tax credit.

1. The applicant must present a copy of the proposed basic health benefits plan it will offer. The Department will verify that the plan has been implemented prior to certifying continued eligibility of the establishment.

2. The Department will analyze proposed new direct jobs to determine if they meet the program criteria

3. The establishment must furnish all sources of remuneration that make up the wages which are used in the determination of the gross payroll. A listing which identifies all positions, with corresponding wages, shall be furnished to verify the gross payroll.

4. The anticipated date (the date the application will be presented to the Board of Commerce and Industry) on which the establishment will first qualify for the incentive tax credit will be determined by the Department.

D. **Documentation Required.** The application information shall be submitted on forms provided by the Department.

E. Analysis, Determination

1. If the applicant is determined to be a qualified establishment by the Department, the Department shall conduct a cost/benefit analysis to determine the estimated net direct state benefits and the net benefit rate applicable for a 10-year period and to estimate the amount of gross payroll for a 10-year period.

2. In conducting such cost/benefit analysis, the Department shall consider quantitative factors, such as the anticipated level of new tax revenues to the state along with the added cost to the state of providing services, and any other information deemed necessary or appropriate by the Department.

3. It is determined by the Department that the entity will have a probable net gain in total employment within the original five-year contract period.

4. The Department will use the number of nonresident employees in the calculation of the net benefit rate. The applicant will furnish the estimated number of Louisiana residents and nonresidents on the application form.

5. For the purpose of financial incentive programs administered by the Department, a Louisiana resident is one who has lived in the state for 30 consecutive days.

6. In no event shall incentive tax credits cumulatively exceed the estimated net direct state benefits.

F. The Department will determine the estimated direct state benefits, the estimated direct state costs, the estimated net direct state benefits, and the net benefit rate based in part on the information provided in the application.

G **Application Procedures/Steps.** The Department reserves the right to require any additional information, not contemplated herein, which may be necessary in order for it to comply with its obligations under this Chapter and R.S. 51:2451-R.S. 51:2461.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996).

§1111. Application to Department of Labor

A. The Department will send a copy of the application and all related information to the Department of Labor. The department must obtain a letter-of-approval or a letter-of-no-objection, from the Department of Labor, prior to submitting the application to the Board of Commerce and Industry for approval. The Department of Labor may require additional information from the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996).

§1113. Application to Department of Revenue and Taxation

A. Prior to approval by the Board of Commerce and Industry, the Department will send a copy of the application and all related information to the Department of Revenue and Taxation. A copy of cost/benefit analysis performed by the Department will accompany such information. The Department of Revenue and Taxation may require additional information from the applicant.

B. The Board of Commerce and Industry must obtain a letter-of-approval or a letter-of-no-objection from the Department of Revenue and Taxation prior to approval of the application.

C. Upon approval of such an application, the Department shall notify the Department of Revenue and Taxation. The Department of Revenue and Taxation may require the qualified establishment to submit such additional information as may be necessary to administer the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996).

§1115. Commerce and Industry Recommendations to Board

A. The Department after review and analysis, will process the application information in a format suitable for presentation to the Board of Commerce and Industry.

B. The presentation of determinations (i.e., estimated direct state benefits, estimated direct state costs, estimated net direct state benefits, net benefit rate) will include all formulas and assumptions made.

C. The contract must be approved by the Board of Commerce and Industry.

D. The Department will make the recommendations for approval or disapproval, and will provide information on behalf of the Department of Revenue and Taxation and the Department of Labor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996).

§1117. The Contract

A. The initial contract may be approved for a period of up to five years. The contract may be renewed for up to an additional five years. The first year of the contract shall be the beginning of the taxable year in which the contract is approved and it shall terminate on the last day of the fifth taxable year. If the contract is renewed, it shall terminate on the last day of the tenth taxable year.

B. The date the establishment first qualifies for the incentive tax credit shall be the date the contract between the Board of Commerce and Industry and the establishment is approved and signed by the governor.

C. The terms of the contract for incentive tax credits shall contain the following requirements.

1. If, within three years of the date that the establishment first qualifies for the tax credit, the actual verified gross payroll for 12 consecutive months does not equal or exceed a total of \$1,000,000, the tax liability for the current taxable period shall be increased by the amount of incentive tax credits previously allowed. If at any other time during the contract period, the actual verified gross payroll for 12 consecutive months does not equal or exceed a total of \$1,000,000, the incentive tax credits shall be suspended and shall not be resumed until such time as the actual verified gross payroll equals or exceeds the amounts specified in this Subsection. However, in no event shall incentive tax credits cumulatively exceed the estimated net direct state benefits.

2. The net benefit rate established under LAC 13:I.1105.G shall remain the same for the period of the contract.

3. The net benefit rate cannot exceed 5 percent of gross payroll.

4. If a qualified establishment, with an active contract under this Chapter, expands beyond the originally estimated gross payroll, it may make a new application for additional incentive tax credits based on the new gross payroll anticipated from the expansion.

5. In order to show continued eligibility, the contractee shall annually provide to the Department, a copy of the basic insurance plan being implemented and all data sent to the Department of Revenue and Taxation for the annual tax incentive credit. The establishment may be audited by the Department to verify such eligibility. The approved contract between the establishment and the Department shall authorize the continued incentive tax credit as long as the establishment retains its eligibility as defined in and established pursuant to this Section and R.S. 51:2453 and 2457 and within the limitations contained in this Chapter, as it existed at the time of such approval.

D. A contract of renewal will be considered by the Department subject to the same conditions as the original application. The contractee shall apply for a renewal contract at least six, but not more than 12 months prior to the expiration of the initial contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996).

§1119. Incentive Tax Credits

A. Incentive tax credits may be taken for the taxable periods specified in the contract against Louisiana corporation and personal income taxes and corporation franchise tax in an amount equal to the net benefit rate provided by the Department multiplied by that years gross payroll of new direct jobs as verified by the Department of Labor.

B. Incentive tax credits cannot exceed net direct state benefits (the estimated state benefits minus all costs to the state as a result of the establishment moving to or expanding in the state) that will accrue to the state as a result of the entity locating in Louisiana.

C. The net gain in total employment will be calculated by the contractee and certified by the Department by using the following method:

1. calculate the average monthly employment using a summary of the four Quarterly Reports of Wages Paid (Department of Labor Form ES -4) covering the 12-month taxable period. The contractee will include copies of all Form ES -4's submitted to the Department of Labor which were used to calculate this average;

2. subtracting the average number of employees at the beginning of the project yields the new direct jobs;

3. verify, by providing a list, showing that 80 percent or more of the new direct jobs worked an average of 25 hours or more per week during that 12-month period;

4. total the gross payroll of the new direct jobs to verify that the minimum \$1,000,000 is met;

5. multiply the gross payroll by the net benefit rate to obtain the incentive tax credit for that taxable period.

D. The contractee must file with the Department on forms prescribed for the annual incentive tax credit.

E. The annual incentive tax credit must be based on the net benefit rate originally established.

F. The Department will perform an audit, if deemed necessary, to verify information provided pursuant to LAC 13:I.1119.C for continued eligibility.

G. Within 60 days of receipt of a completed request form for the respective year's incentive tax credit, the Department will notify the Department of Revenue and Taxation in writing of the contractee's continued eligibility.

Note for Informational Purposes Only: Any excess of allowable credits over the aggregate tax liabilities against which such credit can be applied under this Chapter shall constitute an overpayment as defined in R.S. 47:1621.A. The contractee shall apply to the Secretary of the Department of Revenue and Taxation for refund of such overpayment at the time of filing their state tax return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996).

§1121. Prohibited Incentives

A. A qualified establishment that enters a contract under this Chapter will not be eligible to receive the other credits or exemptions listed under R.S. 51:2458:

1. R.S. 47:34 (tax credit for generation of new jobs in Louisiana);

2. R.S. 47:38 and 287.757 (income tax credit for conversion of vehicles to alternate fuel usage);

3. R.S. 47:4301 through 4306 (the Industry Assistance Program-income tax, corporate franchise tax, state sales tax, and excise tax exemptions for manufacturing establishments);

4. R.S. 47:6004 (employer credit for employment of previously unemployed person);

5. R.S. 47:6009 (Louisiana basic skills training tax credit-income tax credit);

6. R.S. 47:6010 (employer income tax credit for employee alcohol and substance abuse treatment programs);

7. R.S. 51:1787 (incentives tax exemption from sales and use tax materials to be used in the construction of a building and for machinery and income tax credit for each employee in enterprise zone);

8. R.S. 47:287.748 (re-entrant jobs credit for formerly incarcerated employees-corporate income tax);

9. R.S. 47:287.749 (corporate income tax credit for new jobs);

10. R.S. 47:287.753 (neighborhood assistance income tax credit).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:966 (October 1996).

§1123. Penalties

A. Penalties are provided under R.S. 51:2460 for false or fraudulent information in making application, claim for tax credit, or other instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:966 (October 1996).

§1125. Termination of Program

A. No new application or renewal application will be approved under this Chapter by the Board of Commerce and Industry after January 1, 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:966 (October 1996).

§1127. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter which is in conflict with R.S. 51:2451-2461, or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2461 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:966 (October 1996).

Chapter 13. Louisiana Biomedical Research and Development Park Program

§1301. General

A. Relief from taxation may be granted as provided under R.S. 46:318.1(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1303. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise: *Medical Concerns* which are technology-based or innovative growth oriented are defined as Companies engaged in the application of science especially to industrial or commercial objectives. Such

companies should be engaged in the development, manufacture, and sale of products that emerge from or depend upon the practical application of scientific or technological advances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1305. Qualifications

A. To qualify for the Louisiana Biomedical Research and Development Park Program tax incentives an applicant must be a "medical concern" as defined in this rule, must provide documentation evidencing its location in the park area, as described in R.S. 46:813.A, and must demonstrate, by written statement, its viability and ability to contribute to the improved health care of citizens and through improved economic conditions, creation of jobs and to the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant including, but not limited to, the following:

1. the benefits to the state in terms of continued employment opportunities, expenditures for goods and services, contributions to the revenue base of the state and local governments, and the creation of new and additional permanent jobs;
2. competitive conditions existing in other states or in foreign nations;
3. the economic viability of the applicant, and the effect of any tax exemptions or credits on economic viability;
4. the effects on the applicant of temporary supply and demand conditions;
5. the effect of casualties and/or natural disasters;
6. the effects of United States and foreign trade policies;
7. the effect of federal laws and regulations bearing on the economic viability within the state of the applicant; and
8. the competitive effect of like or similar exemptions or credits granted to other applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1307. Filing of Applications

A. An "Advance Notification" of intent to file for the Louisiana Biomedical Research and Development Park tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, and/or occupation of facilities. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance

notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. Applications must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

E. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §1307.B above.

F. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve further extension. All requests for extension must be in writing and must state why the extension is requested.

G. Please make checks payable to: Louisiana Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1309. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

A. The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue and Taxation for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the secretary of Revenue and Taxation shall submit a Letter of No Objection in lieu of a Letter of Recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1311. Application Shall be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue and Taxation and an endorsement resolution of the local taxing authorities and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1313. Board of Commerce and Industry Enters Into Contract

A. Upon approval of the application, by the governor and the Joint Legislative Committee on the Budget, the Board of Commerce and Industry shall enter into contract with the applicant for exemption of the taxes allowed by R.S. 46:813.

1. A copy of the contract shall be sent to the Department of Revenue and Taxation and to the local political subdivision's tax authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1315. Rebates on Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors.

B. State sales and use tax rebates shall be filed according to official Department of Revenue and Taxation procedures.

C. Local sales and use tax rebates shall be filed in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1317. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1319. Affidavits Certifying Eligibility Filed Annually

A. On January 15 of each year, the businesses with contracts will file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §705. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after revocation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1321. Appeals Procedure

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1323. Income and Franchise Tax Requirements

A. In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five year income and franchise tax liability must be provided to the Board of Commerce and Industry by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1325. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Board of Commerce and Industry might have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1327. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue and Taxation.

B. The taxing authorities of the local governmental subdivision issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue and Taxation who will advise the proper procedures to follow in order to obtain the state sales/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

Chapter 15. Louisiana University Research and Development Parks Program

§1501. General

A. Intent of Law. To provide for the reduction in taxes for concerns located in research and development parks operating in association with a public or regionally accredited independent university in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1503. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise.

Concern Any technology-driven or innovative, growth-oriented company engaged in the application of science, especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, assembly or sale of products or services that emerge from or depend upon the practical application of scientific or technological advances.

Construction Period Begins the first day on which foundations are started, or where foundations are unnecessary, the first day that materials or equipment for that project are received, and ends the day that construction is completed or operations begin, whichever is later.

Develop To aid in the growth of or bring into being.

Innovative Growth-Oriented Utilizing new concepts or ideas to induce or sustain growth.

Manufacturing Establishment For the purposes of receiving benefits under this program shall mean those engaged in the mechanical or chemical transformation of materials or substances into new products, or assembling component parts if the finished product is neither a structure nor other fixed improvement.

Park Area The area included in any research and development park which is operated in association with a public or regionally accredited independent university in the state.

Park Developer Person(s) or entity responsible for preparing the park area for use.

Program The Louisiana University Research and Development Parks Program.

Research A scientific or scholarly investigation process.

Technology The application of science, especially to industrial or commercial objectives and the whole body of methods and materials used to achieve such objectives.

University Research and Development Park Includes nonprofit or for-profit research and development parks that have established a relationship with a university or are part of a university. The relationship may be a contractual one including joint ventures or actual operation of a research and development park by a university, or it may take the shape of a formal operational relationship including cooperative or sponsored ventures between a research park and university. A University Research and Development Park shall have:

a. existing or planned land and buildings primarily designed for private and public research and development facilities, technology driven and science-based companies relating to manufacturing, assembly, or support services;

b. a contractual and/or operational relationship(s) with a university or other institution of higher education;

c. a role in promoting research and development by the university in partnership with industry, assisting in the growth of new ventures, and promoting economic development;

d. a role in aiding the transfer of technology and business skills between the university and industry tenants;

e. a resolution from the affiliated university describing its participation in the program.

B. Park developer must submit a resolution to the Office of Commerce and Industry as soon as a park has been established. The resolution must give the following information:

1. specific location and boundaries of the park;
2. documentation of university affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1505. Criteria

A. To qualify for the Louisiana University Research and Development Parks Program tax incentives an applicant must be a *concern*, as defined in §903.A, must provide documentation evidencing its location in a University Research and Development Park, must document its association with a Louisiana public or regionally accredited independent university, and must demonstrate, by written statement, its viability to contribute to the improved scientific information and technology available to the citizens of Louisiana and its ability, through improved economic conditions, to stimulate the creation of jobs and the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1506. Resolution from Local Governmental Subdivision

A. The local governmental authority must file with the Board of Commerce and Industry a resolution for each park located within the jurisdiction of its political subdivision, adopted by the governing authority, which provides for participation by that governmental subdivision in the program. The resolution by the local governing authority shall authorize the Board of Commerce and Industry to grant

rebates and/or exemptions on eligible sales taxes of the local political subdivision as outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1507. Filing of Applications

A. An advance notification of intent to file an application for the Louisiana University Research and Development Parks tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, or occupation of existing facilities. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. An application must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract. An estimated five year income and franchise tax liability must be provided to the Board of Commerce and Industry. This information will be requested on the application form and is to be used to estimate the economic impact of the project to the state.

C. A copy of any application requesting rebate of and/or exemption from taxes of any political subdivision shall be transmitted by the applicant to the governing authority of each political subdivision levying any such taxes. Rebates made by local governing subdivisions may include all of those sales taxes that are not dedicated to the repayment of bonded indebtedness.

D. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

E. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document

may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

F. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §907.B above.

G. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve a further extension. All requests for extension must be in writing and must state why the extension is requested.

H. In addition to the information contained in the application, the applicant shall make available any additional relevant information pertinent to the application that the secretary of the Department of Economic Development or the Board of Commerce and Industry may request.

I. Please make checks payable to: Louisiana Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1509. Recommendations of the Secretaries of Economic Development and Revenue

A. The Office of Commerce and Industry shall forward the application with its recommendations to the secretary of Economic Development and the secretary of Revenue for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue shall submit their recommendations (the secretary of Revenue shall submit a Letter of No Objection in lieu of a letter of recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1511. Application Shall Be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce & Industry with the written recommendations of the secretaries of Economic Development and Revenue, an endorsement resolution of the local taxing authorities, and shall make recommendations to the Board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1513. Contract Approvals

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendation, together with all supporting documentation and the recommendations of the Department of Economic Development and the Department of Revenue, to the Governor and the Joint Legislative Committee on the Budget. When the Governor and Joint Legislative Committee on the Budget find that a concern satisfies the requirements of the law and these rules, they shall advise the Board of Commerce and Industry that it may enter into a contract with such a concern providing for tax rebates, exemptions, and/or credits as allowed by R.S. 17:3389. The contract shall be under the terms and conditions as deemed to be in the best interest of the state. A copy of the contract shall be forwarded to the Department of Revenue, to the local governmental subdivision's tax authority, and the tax collecting officer or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1515. Tax Incentives Available under Contract

A. Tax exemptions may be granted for any of the following:

1. state corporate franchise tax;
2. state corporate income tax;
3. any other tax imposed directly by the state on the applicant.

B. The contract will not authorize the applicant to make tax-free purchases from vendors. Rebates of taxes paid may be granted for any of the following:

1. sales and use taxes imposed by the state or local governmental subdivisions on:
 - a. machinery and equipment used by the applicant;
 - b. materials and building supplies used in the repair, reconstruction, modification, or construction of a plant or facility;
 - c. a tax credit may be granted against the tax liability due to the state for the corporate income tax and the corporate franchise tax, provided however, that such credit shall not exceed the cost of purchase by the concern of machinery and scientific equipment used on the premises of the concern located in the park area;
 - d. materials and supplies necessary for or used in the manufacturing or assembly of the applicant's product, or delivery of services but not on goods or materials that become an integral part of the product or process;
 - e. any other goods and services used or consumed by the applicant's facility in the park.

C. State sales and use tax rebates shall be filed according to official Department of Revenue procedures.

D. Local sales and use tax rebates shall be filed in the manner prescribed by the local governmental subdivision taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1516. Tax Relief Granted

A. The amount of state tax rebates and/or exemptions granted to a concern may be a maximum of 30 percent of the tax liability for state corporate franchise, income, and state sales and use taxes of the concern during the fiscal year preceding the fiscal year for which the rebates and/or exemptions are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

B. The amount of the local governmental subdivision tax rebates granted to a concern may be a maximum of 100 percent of the tax liability for sales taxes due to that local governmental subdivision by the concern during the fiscal year preceding the fiscal year for which the rebates are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

C. Companies are eligible to receive tax benefits, under this chapter, for only facilities located within the park.

D. Tax rebates are available for machinery and equipment when used inside the park by the applicant for research or in the manufacturing, assembly of a product, or delivery of a service. Machinery and equipment shall not be leased, rented, moved, or used, outside the physical premises of the concern receiving the tax benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1517. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract. If the contract is canceled, the Board of Commerce and Industry shall notify the Department of Revenue, the local governmental

subdivision and the agency collecting the local taxes, of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1518. Contract Renewals

A. The initial contract may be entered into for a period up to a maximum of five years under such terms and conditions the Board deems to be in the best interest of the state. Each contract may be renewed for a period of up to five years, provided that the total number of years of a contract shall not exceed 10 years, the terms and conditions of which shall be deemed in the best interest of the state. Any renewal contract shall become effective only if the local governmental subdivision levying the tax approves of the renewal prior to the action by the Board of Commerce and Industry to renew the contract. The applicant shall receive and submit the approval of the local governmental subdivision to the Board of Commerce and Industry along with the request for a contract renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1519. Annual Review

A. On February 15, of each year, the contractee shall file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §905. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Economic Development will notify the Department of Revenue within 30 days after revocation of a contract. On February 15, of each year, the contractee shall provide the Department of Economic Development with a copy of its most recent research and development report from the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1521. Appeals and Petition Procedures

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the Board, must be submitted to the Board's staff at least 30 days prior to the meeting of the Board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1525. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have a representative present who is able to answer any questions the Board of Commerce and Industry may have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

B. The local governing authority of the political subdivision levying taxes within the park shall be notified of the date of the Board of Commerce and Industry meeting at which any application for benefits under this Program will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1527. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue.

B. The taxing authorities of the local governmental subdivision issuing an endorsement resolution should be contacted by the applicant to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue who will advise the proper procedures to follow in order to obtain the state sale/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

Chapter 17. Industry Assistance Program

§1701. Use of Louisiana Contractors, Labor and Supplies

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and in the absence of Louisiana manufacturers, to Louisiana suppliers, engineers, contractors and labor except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies and equipment manufactured in Louisiana, or, in the absence of Louisiana manufacturers, sold by Louisiana residents, and to the use of Louisiana residents, and to the use of Louisiana engineers, contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1703. Qualifications

A. To qualify for the exemption, the applicant must be a manufacturer with Louisiana manufacturing plants which are currently in operation. The applicant must be able to demonstrate to the Board's satisfaction that with the aid of the exemption they will remain a viable company that will continue to grow and prosper in Louisiana. The applicant will not be eligible for this program if the manufacturing establishment has been assessed two or more criminal penalties, pursuant to R.S. 30:1073, (environmental violations) within 24 months preceding the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1705. How to Apply

A. An "Advance Notification" of intent to file for Industry Assistance shall be filed by the company at least 90 days prior to filing an application. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. Application to the Board of Commerce and Industry for the Industry Assistance Program must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, along with the required additional information.

C.1. An application fee shall be submitted with the application based on the following range of taxes estimated to be exempted:

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

2. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

D. Application must be accompanied by five years of comprehensive financial statements, prepared in accordance with generally accepted accounting principles; and, which contains relevant information that will support the application justification. The justification should refer to qualitative as well as quantitative information contained in the financial statements which can materially demonstrate the need for the program benefits, and the resulting cost/impact benefits to the state. Qualitative information should provide explanation about: economic resources, the sources of prospective cash inflows; obligations to transfer economic resources to others, the causes of prospective cash outflows; and earnings, the financial results of operations and other events and conditions that affect the enterprise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986).

§1707. Additional Information May Be Required

A. In addition to the information contained in the application, the applicant shall make available any additional information and records the Secretary of Commerce or the Board of Commerce and Industry may request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1709. Public Hearings

A. The Industrial Assistance Review Committee of the Board of Commerce and Industry shall conduct public hearings on any application for exemption. The Secretary of Commerce shall present his recommendations to the Committee. After due consideration to all facts and testimony, the Industrial Assistance Review Committee shall

make its recommendations to the full Board of Commerce and Industry at its next regular meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1711. Requirements for Exemption

A. The Secretary of Commerce, the Board of Commerce and Industry, the Governor and the Joint Legislative Committee of the Budget may consider any and all factors which are relevant to the continued operations of the applicant. These should include, but not be limited, to the following:

1. The benefits to the State in terms of continued employment opportunities, payroll, expenditures for goods and services, contributions to the revenue base of the state and local governments and the creation of new and additional permanent jobs.

2. Competitive conditions existing in other states or in foreign nations.

3. The economic viability of the applicant and the effect of any tax exemption on economic viability.

4. The effects on applicants of the temporary supply and demand conditions.

5. The effects of casualties and/or natural disasters.

6. The effects of United States and foreign trade policies.

7. The effect of federal laws and regulations bearing on the economic viability of the applicant within the State.

8. The competitive effect of like or similar exemptions granted to other applicants.

9. The record of civil violations of the applicant pursuant to R.S. 30:1073 (environmental violations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1713. Approval of the Joint Legislative Committee of the Budget and the Governor

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendations together with all supporting documents and the recommendations of the Department of Commerce to the Governor and the Joint Legislative Committee of the Budget the assessor of the parish in which the plant is located, each member of the legislature, and the governing authority of each political subdivision as required by the statute. Whenever the Governor and the Joint Legislative Committee of the Budget finds that a manufacturing establishment satisfies the requirements of the law, they shall advise the Board of Commerce and Industry that it may, subject to any

restrictions imposed by the Governor or the Joint Legislative Committee of the Budget, enter into a contract with such establishment exempting it from taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1715. Taxes to be Exempt

A. Unless the Board of Commerce and Industry recommends, and unless the Joint Legislative Committee of the Budget approves otherwise, the tax to be exempt will be used in the following order:

1. the corporation franchise tax;
2. sales and use taxes imposed by the state on any goods, services, material and supplies necessary for or used in manufacturing or production of a product or consumed by the applicant;
3. sales and use taxes imposed by the State on machinery and equipment to be used by the applicant, or materials and building supplies, whether purchased directly or through a contractor, to be used in the repair, reconstruction, modification or construction of plant and facilities;
4. the corporation income tax;
5. any other taxes imposed directly by the state on the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1717. Limits to Amount of Tax Exemption

A. The total amount of tax exemptions that can be granted to any single applicant cannot exceed 5 percent of the available amount for tax exemptions under this program for any fiscal year except when upon further recommendation of the board and approval of the Joint Legislative Committee of the Budget and the Governor it can be clearly demonstrated that an additional amount not to exceed five percent of the available amount, can materially improve the viability and stability of the applicant's operation in Louisiana. There will also be a maximum amount of tax exempted during any year of each contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985).

§1719. Contract Subject to Annual Audit and Review

A. The contractee will be subject to an annual audit by the Finance Division of the Office of Commerce and Industry. The company will receive notice of the annual review 45 days in advance. A review fee of \$100 must be returned and received 15 days prior to the appointment date

of the annual review. The contract will be reviewed annually by both the Board of Commerce and Industry and the Joint Legislative Committee of the Budget. Should the audit or review uncover a violation of the contract, the Board of Commerce and Industry, with the approval of the Governor and the Joint Legislative Committee of the Budget, shall give notice, thereof, in writing, and unless the violation is corrected within 90 days, any remaining portion of the exemption from taxation granted under any contract entered into under this statute may be canceled. The contract may also be canceled if the contractee can no longer demonstrate a need for the exemption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986).

§1721. Renewing the Contract

A. The initial contract can be entered into for any period not exceeding five years. Each contract may be renewed for periods of up to five years providing that the contractee can show that it is in the best interest of the State of Louisiana to extend the contract. The renewal must be recommended by the Department of Commerce, the Board of Commerce and Industry and approved by the Joint Legislative Committee of the budget and the Governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985).

§1725. Minority Set-Aside

A. Any new manufacturing establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified minority-owned businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each manufacturing establishment shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. The methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or,

iii. cannot be performed by a certified minority-owned business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subsection D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of economic development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the secretary of economic development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4306; R.S. 39:1956.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

Chapter 19. Industrial Tax Equalization Program

§1901. General

A. Intent of Law. For qualifying manufacturers, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Industrial Tax Equalization Program is an inducement to attract new manufacturing facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed manufacturing operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1903. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana, or in the absence of Louisiana manufacturers, sold by Louisiana residents, and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1905. Minority Set-Aside

A. Any new manufacturing establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority-owned businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified minority-owned businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each manufacturing establishment shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. the methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or,

iii. cannot be performed by a certified minority-owned business in a timely manner;

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subsection D. 3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206,

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1907. Eligibility for Submission of Application

A. The applicant for tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed manufacturing operations.

C. A new manufacturing establishment at the time it is locating in Louisiana, must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax

advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1909. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1911. Application Procedure

A. Prior to the formal plant announcement, an "Advance Notification" of intent to file for Industrial Tax Equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The Secretary of the Department of Economic Development, after favorable review of the advance notification shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within 10 days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1913. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information:

1. The chief financial officer of the applicant company requesting tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. plant construction cost;
- b. annual labor cost;
- c. annual raw materials cost;
- d. annual transportation cost;
- e. annual power cost; and
- f. site cost.

B. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

1. State Sales/Use Tax;
2. State Corporate Income Tax;
3. State Corporate Franchise Tax;
4. State Ad Valorem Property Tax (where applicable);

5. State Inventory Tax (where applicable); and
6. any other state taxes.

C. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

1. Local Sales/Use Tax;
2. Local Ad Valorem Property Tax;
3. Local Inventory Tax; and
4. any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989).

§1915. Yearly Determination of Tax Equalization Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state; and

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge

and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation shall be granted in the following priority:

1. state sales and use taxes on machinery and equipment to be used in the manufacturing process;
2. state corporation franchise tax;
3. state corporation income tax;
4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;
5. any other tax imposed by the state of Louisiana to which the applicant is subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989).

§1917. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1919. Affidavit of Final Cost

A. Within six months after completion of construction or the Purchase of facility, the owner of the new manufacturing establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1921. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §2313 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1923. Annual Review /Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have ninety days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1925. Environmental Report Requirement

A. Any new commercial manufacturing establishment whose primary business is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana shall submit with the application:

1. information relative to the impact the new manufacturing establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

Chapter 21. Tax Equalization for Manufacturing Facilities

§2101. Foreword

A. Act 12 is meant to be an Inducement to attract new manufacturing facilities to Louisiana which might not ordinarily locate here due to a higher tax burden. The Act is designed to reduce or eliminate this tax differential through the equalization of the overall tax picture between a Louisiana site and a competing site in another state. A prerequisite is that the sites under consideration be valid and viable for the proposed manufacturing operations.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2103. Eligibility

A. To be eligible for consideration under Act 12 a manufacturing operation must be new to the State or have the written approval of competitors to apply for consideration under the Act. The Standard Industrial Classification codes will be used to determine if an industry is new to the State or requires competitors' approval. The Board shall take the number of jobs to be created into consideration in making its recommendation to the Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2105. Certification of Sites

A. The chief financial officer of the applicant company requesting tax equalization under Act 12 must certify in writing the following estimated costs for each site under consideration:

1. plant construction cost;
2. annual labor cost;
3. annual raw materials cost;
4. annual transportation cost;
5. annual power cost; and
6. site cost.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2107. Certification of Taxes

A. A certified estimate of the following state taxes covering the first five years of operations (including the construction period) must be filed for each site under consideration:

1. state sales/use tax;
2. state corporate income tax;
3. state corporate franchise tax;
4. state ad valorem property tax; and
5. state inventory tax.

B. Additional applicable state taxes must be included and comparable information is to be listed for all proposed sites.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2109. Certification of Local Taxes

A. A certified estimate of the following local taxes covering the first five years of operations (including construction period) must be filed for each site under consideration:

1. local sales/use tax;
2. local ad valorem property tax; and
3. local inventory tax.

B. Additional applicable local taxes must be included and comparable Information is to be listed for all proposed sites.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2111. Contract Period

A. Maximum length of time for a given contract is five years (including construction period). However, one additional five year contract can be negotiated for a total of ten years.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2113. Method of Computation

A. Total Louisiana taxes (state and local) shall be computed for a period of five years (including construction period) and compared to the total taxes for the similar period for the competing sites. If the Louisiana site is at a total tax disadvantage, then the appropriate Louisiana taxes will be

adjusted to eliminate this difference in the shortest practical time.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2115. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five year contract period shall file with the Board secretary the information required in rules three and four regarding certification of taxes.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2117. Board Action on Applications

A. All Board action on applications will be made at regularly scheduled Board meetings.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2119. Violation of Contract

A. The Board of Commerce and Industry or its designated representative shall verify all items filed by the applicant company. On the Board's initiative, or whenever any written complaint or violation of terms of the contract is received, the Board shall cause to be made a full investigation on its behalf. If the investigation substantiates a violation, the Board may formally request of the Louisiana Tax Commission termination of the contract.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

Chapter 23. Tax Equalization for New Corporate Headquarters

§2301. General

A. Intent of Law. For qualifying new corporate headquarters, the Board of Commerce and Industry may enter into a contract to equalize the franchise tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Corporate Headquarters Tax Equalization Program is an inducement to attract new corporate headquarters facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the franchise tax differential between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed new corporate headquarters operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The

governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989).

§2303. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires any new corporate headquarters and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana, or in the absence of Louisiana manufacturers, sold by Louisiana residents, and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the new corporate headquarters receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989).

§2305. Minority Set-Aside

A. Any new corporate headquarters, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority-owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified minority-owned businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected corporate headquarters shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each corporate headquarters shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. the methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses.

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or

iii. cannot be performed by a certified minority-owned business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous protections were reported under Subsection D.3 and 4.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the secretary of economic development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2307. Eligibility for Submission of Application

A. The applicant for tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed new corporate headquarters operations.

C. A new corporate headquarters establishment at the time it is locating in Louisiana, must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new establishment is located or is contemplating locating must have a state, franchise tax which offers a greater tax advantage to such establishment than does the franchise tax of Louisiana.

E. The secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

G. To be eligible for consideration under this program, the corporate headquarters facility must be new to the state or have the written approval of its competitors in order to apply for consideration for this program. The Standard Industrial Classification codes will be used to determine the competitive industries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2309. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or

affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2311. Application Procedure

A. Prior to the formal announcement to locate in Louisiana, an "Advance Notification" of intent to file for the New Corporate Headquarters Tax Equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The secretary of Department of Economic Development, after favorable review of the Advance Notification, shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All commerce and industry board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within ten days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new corporate headquarters establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2313. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting New Corporate Headquarters Tax Equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. state sales/use tax;
- b. state corporate income tax;
- c. state corporate franchise tax;
- d. state ad valorem property tax (where applicable);
- e. state inventory tax (where applicable);
- f. any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. local sales/use tax;
- b. local ad valorem property tax;
- c. local inventory tax; and
- d. any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2315. Yearly Determination of Tax Equalization Amount

A. The contract of franchise tax equalization shall, on an annual basis, effect equality in amount between the franchise taxes payable in Louisiana and the franchise taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish, to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis. Using forms provided by the competing state, a computation of the corporate income tax and

corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the franchise tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent Certified Public Accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the franchise tax liability of the contractee in Louisiana and the franchise tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the franchise tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the franchise tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana franchise tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2317. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year franchise tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2319. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the new corporate headquarters establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the facility inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2321. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in Rule 6 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2323. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office Of Commerce and Industry, Finance Division, LR 15:1046 (December 1989).

§2325. Environmental Report Requirement

A. Any new corporate headquarters establishment whose primary business is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana shall submit with the application:

1. information relative to the impact the new corporate headquarters establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1046 (December 1989).

Chapter 25. Tax Equalization for New Warehousing and Distribution Establishments

§2501. General

A. Intent of Law. For qualifying new warehousing and distribution establishments, the board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The new warehousing and distribution tax equalization program is an inducement to attract new warehousing and distribution facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed new warehousing and distribution operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15: (December 1989).

§2503. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires new warehousing and distribution establishments and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana, Or in the absence of Louisiana manufacturers. sold by Louisiana residents. and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt

facilities. It is a legal and moral obligation of the new warehousing and distribution establishments receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2505. Reserved.

§2507. Eligibility for Submission of Application

A. The applicant for new warehousing and distribution tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed new warehousing and distribution operations.

C. A new warehousing and distribution establishment at the time it is locating in Louisiana must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new warehousing and distribution establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2509. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract. Please make checks payable to the Louisiana Office of Commerce and Industry.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance

notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2511. Application Procedure

A. Prior to the formal announcement of the new warehousing and distribution location, an "Advance Notification" of intent to file for new warehousing and distribution tax equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The secretary of Department of Economic Development, after favorable review of the Advance Notification, shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All Commerce and Industry board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within ten days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new warehousing and distribution establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2513. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10 year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting new warehousing and distribution tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. annual labor cost;
- c. annual transportation cost;
- d. annual power cost;
- e. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. State Sales/Use Tax;
- b. State Corporate Income Tax;
- c. State Corporate Franchise Tax;
- d. State Ad Valorem Property Tax (where applicable);
- e. State Inventory Tax (where applicable);
- f. Any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. Local Sales/Use Tax;
- b. Local Ad Valorem Property Tax;
- c. Local Inventory Tax;
- d. Any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2515. Yearly Determination of Tax Equalization Amount

A. The contract for new warehousing and distribution tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish, to the Department of Revenue and Taxation and the Department of

Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state;

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Unless the Department of Revenue and Taxation for valid written reasons recommends otherwise and the Board

of Tax Appeals approves such recommendations, exemptions from taxation for a new warehousing and distribution establishment, shall be granted in the following priority:

1. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the new warehousing and distribution establishment;
2. the corporation franchise tax;
3. the corporation income tax;
4. state sales and use tax on purchases of materials and supplies necessary for the on-site operation of the new warehousing and distribution establishment;
5. state sales and use tax on purchases of tangible personal property used in the construction of the new warehousing and distribution establishment;
6. any other taxes imposed by the state to which like businesses are subject. Exemptions from taxation shall be granted in the following priority:

G. In no event shall any exemption from ad valorem property taxes be granted under any contract entered into. This exemption applies only to sales and use tax imposed by the State of Louisiana and does not apply to such taxes authorized and levied by any school board, municipality, or other local taxing authority notwithstanding any other provision of the law to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2517. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year new warehousing and distribution tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2519. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the new warehousing and distribution establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the

project, together with a fee of \$100 for the facility inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2521. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §2513 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application,

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

§2523. Annual Review/ Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15: (December 1989).

Chapter 31. Assessment of Tax-Exempt Pollution Control Equipment

§3101. Assessment of Tax-Exempt Pollution Control Equipment

A. Six months prior to the date of expiration of an industrial tax exemption contract on air or pollution control equipment, the subject company will file with the Board of and Industry the following information:

1. four copies of the tax exemption contract covering the equipment;
2. four copies of the certification by the Louisiana Air and/or Stream Control Commission(s) that the subject equipment is a valid pollution control device;

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3. four certified copies of a rendition of the actual market value of the equipment at the time the tax exemption is to expire, according to the method set forth in Act 69.

B. Upon receipt of this material it will be reviewed for content by the Board of Commerce and Industry, meeting in regular session, prior to the expiration date of the tax exemption contract.

C. If the Board is satisfied with the information received, it will direct the Executive Director of the Department of Commerce and Industry to issue to the subject company a letter certifying that:

1. a valid tax exemption contract has existed on subject pollution abatement equipment;

2. it meets the standards of the appropriate State pollution control agencies;

3. it appears to qualify under the provisions of Act 69 of 1973 covering the method such pollution control equipment is to be assessed.

D. The original of this document is to be returned to the subject company, along with one copy each of the items listed in Section I of this resolution. A copy of the letter of certification, together with one copy each of the items in Section I of this resolution, is to be forwarded to the Assessor of the Parish in which subject equipment is located, and a duplicate copy of all material sent to the Louisiana Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.31.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, March 1974, by resolution.

Title 13 ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP)

§101. Purpose

A. The purpose of the program is to finance publicly owned infrastructure for industrial or business development projects that promote economic development and that require state assistance for basic infrastructure development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:405 (March 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:1659 (September 1999), LR 26:236 (February 2000).

§103. Definitions

Applicant Cthe sponsoring entity requesting financial assistance from DED under this program.

Award Cfunding approved under this program for eligible applicants.

Awardee Can applicant [and/or company(ies)] receiving an award under this program.

Basic infrastructure Crefers to the construction, improvement or expansion of roadways, parking facilities, equipment, bridges, railroad spurs, water works, sewerage, buildings, ports, waterways and publicly owned or regulated utilities.

Company Cthe business enterprise for which the project is being undertaken.

DEDC Louisiana Department of Economic Development.

Program Cthe Economic Development Award Program.

Project Can expansion, improvement and/or provision of basic infrastructure that promotes economic development, for which DED assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Secretary Cthe Secretary of the Department of Economic Development.

Sponsoring entity Cthe public or quasi-public entity responsible for performing and/or overseeing implementation of the project and supervising the company's

compliance with the terms and conditions of the award agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:405 (March 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:1659 (September 1999), LR 26:236 (February 2000).

§105. General Principles

A. The following principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state will be considered in making the award.

6. Appropriate cost sharing among project beneficiaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:405 (March 1999), amended by the Department of Economic Development, Office of the Secretary, LR 25:1659 (September 1999), LR 26:237 (February 2000).

§107. Eligibility

A. An eligible applicant for the Grant Award must be one of the following:

1. a public or quasi-public state entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if company has another contract with the Department of Economic Development in which the company is in default and/or is not in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:237 (February 2000).

§109. Criteria

A. Job Creation/Retention

1. Projects must create or retain at least 10 permanent jobs in Louisiana.

2. Number of jobs to be retained and/or created as stated in the application will be strictly adhered to and will be made an integral part of the contract.

B. Preference will be given to projects for industries identified by the state as target industries, and to projects located in areas of the state with high unemployment levels.

C. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.

D. Companies must be in full compliance with all state and federal laws.

E. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when company gives sufficient evidence that it is otherwise likely to relocate out of Louisiana.

F. The minimum award request size shall be \$25,000.

G. Preference will be given for wages substantially above the prevailing regional wage.

H. If a company does not begin construction of the project within 365 calendar days after application approval, the secretary, at his discretion, may cancel funding for the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:237 (February 2000).

§111. Application Procedure

A. The sponsoring entity must submit an application on a form provided by DED which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. a description of the project along with the factors creating the need, including construction, operation and maintenance plans, and a timetable for the project's completion;

3. evidence of the number, types and compensation levels of jobs to be created or retained by the project;

4. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:237 (February 2000).

§113. Submission and Review Procedure

A. Applicants must submit their completed application to DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented;

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the net economic and fiscal benefits to the state and local communities, will be prepared by DED.

C.1. Upon determination that an application meets the criteria for this program, DED staff will then make a recommendation to the secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

a. the secretary of the Department of Economic Development;

b. the Governor; and

c. the Joint Legislative Committee on the budget.

2. The secretary can invoke emergency procedures and approve an application under the following conditions: The company documents in writing to the secretary of Economic Development with copies to the Governor and Chairman of the Joint Legislative Committee on the Budget that a serious time constraint exists and that a new plant,

expansion or closure decision is to be made in fewer than 21 days or more than 31 days before the next scheduled meeting of the Joint Legislative Committee on the Budget.

D. The final 15 percent of the grant amount will not be paid until DED staff or its designee inspects the project to assure that all work in the EDAP contract has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:238 (February 2000).

§115. General Award Provisions

A. Award Agreement. A contract will be executed between DED, the sponsoring entity and the company. The agreement will specify the performance objectives expected of the compan(ies) and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment and job creation. Under the agreement, the sponsoring entity will oversee the progress of the project. DED will disburse funds to the sponsoring entity in a manner determined by DED.

B. Funding

1. Eligible project costs may include, but not be limited to, the following:

- a. engineering and architectural expenses;
- b. site acquisition;
- c. site preparation;
- d. construction expenses;
- e. building materials;
- f. capital equipment.

2. Project costs ineligible for award funds include, but are not limited to:

- a. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- b. company moving expenses;
- c. expenses already approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;
- d. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;
- e. refinancing of existing debt, public or private;
- f. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment with useful life of less than seven years.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed:

- a. ninety percent for projects located in parishes with per capita personal income below the median for all parishes; or
- b. seventy-five percent for projects in parishes with unemployment rates above the statewide average; or
- c. fifty percent for all other projects.
- d. Other state funds cannot be used as the match for EDAP funds.
- e. All monitoring will be done by DED. A portion of the fiscal years' appropriation, up to 5 percent or a maximum of \$100,000, may be used by the DED to fund monitoring costs.

2. The award amount shall not exceed 25 percent of the total funds available to the program during a fiscal year.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Grant award funds will be available to the sponsoring entity on a reimbursement basis following submission of required documentation to DED from the sponsoring entity.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the secretary's approval will be considered eligible for reimbursement, contingent on the final approval by the Governor and the Joint Legislative Committee on the Budget.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. DED receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;
- c. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. Companies and sponsoring entities shall be required to submit progress reports, describing the progress

towards the performance objectives specified in the award agreement. Progress reports by sponsoring entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments. Further, sponsoring entity shall oversee the timely submission of reporting requirements of the company to DED.

2. In the event a company or sponsoring entity fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event a company or sponsoring entity knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:238 (February 2000).

§117. Public Safety Provision

A. The secretary may approve a request for funding for less than \$25,000 if the request involves the protection and enhancement of the safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:405 (March 1999), LR 25:1659 (September 1999), LR 26:239 (February 2000).

Chapter 3. Workforce Development and Training Program

§301. Purpose

A. The purpose of the program is to develop and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community;
2. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000).

§303. Definitions

Applicant Cthe entity requesting training assistance from DED under this program.

Award Cfunding approved under this program for eligible training activities.

Awardee Can applicant (and/or company(ies)) receiving a training award under this program.

Contract Ca legally enforceable agreement between DED, the awardee and a sponsoring entity governing the terms and conditions of the training award.

Contractee Cthe awardee and sponsoring entity that are party to a training award contract with DED under this program.

DEDC Department of Economic Development.

Program Cthe Workforce Development and Training Program.

Secretary Cthe secretary of the Department of Economic Development.

Sponsoring Entity Cthe public or not for profit entity responsible for performing and/or overseeing implementation of the project and supervising the company's compliance with the terms and conditions of the award agreement and for reimbursing the awardee for eligible training costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:241 (February 2000).

§305. General Principles

A. The following principles will direct the administration of the Workforce Development and Training Program:

1. training awards are not to be construed as an entitlement for companies locating or located in Louisiana;
2. awards must reasonably be expected to be a significant factor in companies' location, investment, and/or expansion decisions;
3. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;
4. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the

state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;

5. the anticipated economic benefits to the state will be considered in making the award;

6. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate; and

7. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000).

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000).

§309. Eligibility

A. An eligible applicant is an employer or community-based organization that seeks customized training services to provide training in a particular industry.

B. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

C. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if company has another contract with the

Department of Economic Development in which the company is in default and/or is not in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000).

§311. Criteria

A. General

(These apply to all training programs administered under these rules.)

1. Preference will be given to applicants in industries identified by the state as target industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the secretary, at his discretion, may cancel funding of the training.

4. Number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000).

§313. Application Procedure

A. DED will provide a standard form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which DED assistance is requested, including descriptions of the methods, providers and costs of the proposed training; and

4. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:242 (February 2000).

§315. Submission and Review Procedure

A. Applicants must submit their completed application to DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;
2. identify the availability of existing training programs which could be adapted to meet the employer's needs;
3. verify that the business will continue to operate during the period of the contract;
4. determine if employer's training plan is cost effective.

B. A cost-benefit analysis tailored to applicants' specific industries shall be conducted by DED to determine the net benefit to the state of the proposed training award.

C. Upon determination that an application meets the criteria for this program, DED staff will then make a recommendation to the Secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

1. the Secretary of the Department of Economic Development;
2. the Governor; and
3. the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000).

§317. General Award Provisions

A. Award Agreement

1. A contract will be executed between DED, the applicant (and/or company(ies) receiving training) and an appropriate sponsoring entity from the same geographic area as the applicant. The contract will specify the performance objectives expected of the company(ies) and the compliance

requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for job training and job creation.

2. DED will disburse funds to the sponsoring entity in a manner determined by DED.

3. The sponsoring entity will oversee the progress of the training and reimburse the applicant from cost reports submitted by the applicant on a form approved by DED. DED, at its discretion, may request the sponsor to obtain additional information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon request and approval of the contractor and the secretary.

B. Funding. Award may not exceed \$500,000 for total amount.

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

- a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;
- b. travel costs: travel for trainers, training coordinators and trainees;
- c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and Computer Based Training (CBT) software; and
- d. other costs: when necessary for training, such as facility rental.

3. Training costs ineligible for reimbursement include:

- a. trainee wages and fringe benefits;
- b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-Computer Based Training (CBT) software), unless owned by a public training provider;
- c. out-of-state, publicly supported schools;
- d. employee handbooks;
- e. scrap produced during training;
- f. food, refreshments; and
- g. awards.

4. Training activities eligible for funding consist of:

- a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to DED by sponsoring entity. Funds will not be available for reimbursement until a training agreement between the applicant (and/or company(ies) receiving the training), DED and sponsoring entity has been executed. Only funds spent on the project after the Secretary's approval will be considered eligible for reimbursement. However, reimbursement's can only be provided upon final execution of a contract with the Department of Economic Development.

2. Companies will be eligible for reimbursement at 90 percent until all contracted performance objectives have been met. After the company has achieved 100 percent of its contracted performance objectives, the remaining 10 percent of the grant award will be made available for reimbursement.

D. Compliance Requirements

1. Contractees shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract with DED. Progress reports by sponsoring entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments. Further, sponsoring entity shall oversee the timely submission of reporting requirements of the company to DED.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company or sponsoring entity fails to meet its performance objectives specified in its contract with DED, DED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

4. In the event a company or sponsoring entity knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

5. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:243 (February 2000).

§319. Contract Monitoring

A. All monitoring will be done by DED. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of \$200,000, may be used by the DED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:243 (February 1999), LR 25:405, LR 25:1664 (September 1999), LR 26:244 (February 2000).

Chapter 5. Port Development Program

§501. Purpose and Scope

A. The purpose of the program is to provide financial assistance to public port authorities for capital projects which improve or maintain waterborne commerce and intermodal port infrastructure. Under this program, the Department of Economic Development (DED) is authorized to accept and review applications from eligible port authorities for project assistance. Upon favorable evaluation and prioritization of individual projects by DED's review committee, recommendations may be made to the Secretary of Economic Development for funding qualified projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:239 (February 2000).

§503. Definitions

Applicant Cthe sponsoring Louisiana port authority requesting financial assistance from DED under this program.

Award C funding approved under this program for eligible applicants.

Awardee Can applicant receiving an award under this program.

Capital Projects C include any port infrastructure development project including land acquisition and attendant development costs.

Cash Cany asset on the port's records used for the project. Land's value will be determined by its appraised value.

DEDC Louisiana Department of Economic Development.

In-Kind Any service, land or equipment, related to the project, donated to a port outside of its legal entity.

Intermodal Infrastructure Development Refers to the provision of highway, rail, water or air access; and internal trans-loading or distribution facilities to property owned and maintained by a local port authority.

Program the Port Development Program.

Project Priority List A list of projects proposed by eligible applicants ranked for program funding by the Department of Economic Development.

Secretary the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:239 (February 2000).

§505. Program Objective

A. The objectives of this program are to develop and sustain the Louisiana ports and the navigable waterways system, particularly those infrastructures that improve efficiency of the system and contribute to the location of new industry, or expansion and retention of existing industry and employment within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§507. Eligibility

A. All Louisiana public port authorities are eligible to participate in the program. However, port projects that are eligible for funding under the Port Construction and Development Priority Fund administered by the Department of Transportation and Development will not be eligible for funding under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§509. Types of Projects

A. The types of projects funded under the program will include any type of port capital development projects, rehabilitation and maintenance, intermodal projects, land acquisition, site prep work and project feasibility studies that promote water transport and waterfront development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§511. Match

A. Each port authority will provide a match equal to at least 50 percent of the total cost of the project. The match may be furnished in cash or in-kind. No state funds can be used as matching funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§513. Application Procedure

A. Port authorities sponsoring projects are expected to provide complete and verifiable information on the proposed projects. The project information supplied should be accurate and documented in order for the department to adequately assess the merits of the project and prepare a project priority list. The sponsoring port authority must submit an application on a form provided by the Department which will contain, but not be limited to the following:

1. a description of the proposed Application Procedure project including the nature and goals of the project, design and its major components. Justify the immediate need for the project;
2. indicate the total cost of the project. Also show the sources of funding and when they will be available;
3. provide construction, operation and maintenance plans, and a timetable for the project's completion;
4. any additional information the Secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§515. Submission of Applications

A. Applications must be submitted to the DED by March 1 to be considered for funding for the following fiscal year. Two copies of the application with all attachments should be submitted to the Secretary of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§517. Criteria

A. Consideration will be given to projects which have completed preliminary planning work and ensure that the project is initiated within the funding year in which the project is approved.

B. Consideration will be given to the project's contribution to regional economic development.

C. Preference will be given to projects with high employment potential and payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§519. Project Review Procedure

A. Submitted applications will be reviewed and evaluated by a DED review committee. The committee will prepare a list of projects for funding and, if necessary, input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. validate the information presented; and
3. determine the overall feasibility of the port's plan.

B. After evaluation the review committee will submit a list of projects recommended to be eligible for funding to the Secretary of the Department of Economic Development.

C. The Secretary of DED will have the final authority in funding any recommended project under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:240 (February 2000).

§521. Funding

A. A port shall not be allocated in excess of 50 percent of the total appropriation as long as the appropriation does not exceed \$5,000,000. In the event the appropriation for the Port Development Program exceeds \$5,000,000, an individual award shall not exceed \$1,000,000 each.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:241 (February 2000).

§523. Conditions for Disbursement of Funds

A. Grant award funds will be available to each port on a reimbursement basis following submission of required documentation to DED. Only funds spent on the project after the cooperative endeavor agreement (contract) has been agreed upon, signed and executed will be considered eligible for reimbursement.

B. Ports will be eligible for reimbursement of approved expenses up to 90 percent of the award amount. After all deliverables are completed according to the terms of the contract, the final 10 percent of the award will be made available for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:241 (February 2000).

§525. Monitoring

A. All monitoring will be done by DED. A portion of the fiscal years' appropriation, up to 5 percent, not to exceed \$50,000, may be used by the DED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (October 1999), LR 25:1662 (September 1999), LR 26:241 (February 2000).

Chapter 7. Regional Initiatives Program

§701. Purpose

A. The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§703. Definitions

Applicant Cthe entity requesting financial assistance from DED under this program.

Award Cgrant funding approved under this program for eligible applicants.

Awardee Can applicant receiving an award under this program.

DEDC Louisiana Department of Economic Development.

Operating Costs Congoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program Cthe Regional Initiatives Program.

Secretary Cthe Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§705. General Principles

A. The following principles will direct the administration of the Regional Initiatives Program.

ECONOMIC DEVELOPMENT

1. Awards should be considered to be one time only funding to achieve a specific goal for a regional (multi-parish) economic development organization or coalition of organizations.

2. Grant proposals must delineate clearly what is proposed and what is to be achieved by the award.

3. Awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment, unless approved by the secretary.

4. Projects to be funded must augment the Louisiana Economic Development Councils plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§707. Eligibility

A. An eligible applicant for the Grant Award can include but is not limited to one of the following:

1. an existing regional economic development organization;

2. local chambers of commerce;

3. local economic development organizations;

4. multi-parish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;

5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§709. Criteria

A. Preference will be given to projects that are regional (multi-parish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

E. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§711. Application Procedure

A. The applicant must submit an application on a form provided by DED which shall contain, but not be limited to, the following.

1. A narrative proposal (maximum of three pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested.

2. Copy of letter(s) notifying the applicant's local governments, area legislators, and the prevailing economic development organization of your intent to apply for R.I.P. funding.

3. Quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables.

4. A detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project.

5. Résumé(s) of consultants involved with the project.

6. Any additional information the Secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§713. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and region;

2. determine whether the project's funding requirements are best met by the proposed award;

3. validate the information presented;

4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the Secretary. If the Secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the Secretary's approval will be considered eligible project costs.

2. The Secretary will issue a Letter of Commitment to the applicant within five working days of the application review and approval.

3. The final 10 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

§715. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's match.

2. Project costs ineligible for award funds include, but are not limited to:

- a. ongoing operating costs;
- b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment, unless approved by the secretary.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12 1/2 percent of the total project cost may be in-kind. For the purposes of this program, in-kind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The Secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the Secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

3. Award funds will not be available for disbursement until:

a. DED receives signed commitments by the project's other financing sources (public and private);

b. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress towards the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event an awardee knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

Chapter 9. Louisiana Industrial Training Program

§901. Eligibility

A. Applicant must be a manufacturing firm.

B. Applicant must apply for a minimum of 10 net-new, permanent manufacturing jobs that are classed as entry-level unskilled.

C. Applicant must assign a supervisor/instructor to at least 10 trainees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§903. Preference

A. Preference will be given to applicants locating in a parish which has an unemployment rate higher than the state average.

B. Secondary preference will be given to companies in targeted Standard Industrial Classification (SIC) Codes. The target industries for any particular fiscal year shall be

determined by the secretary of economic development in June of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§905. Method and Timing of Application

A. An application shall be submitted for approval to the development supervisor for the Department of Economic Development, Office of Commerce and Industry.

B. The application shall include a manning table setting forth job titles, number of employees per job title and hourly wage per job title. A maximum of 10 percent deviation in the proposed manning table will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§907. Contract and Monitoring

A. A contract shall be executed between the state of Louisiana and a local approved non-profit economic development organization from the same geographical area as the site location of the applicant on behalf of the applicant industry.

B. The nonprofit corporation shall monitor the progress of training under the contract and report to the development supervisor who shall also monitor the progress of the training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§909. Method of Payment

A.1. Payment to the non-profit monitor shall be reimbursable from an invoice which shows:

- a. name of supervisor(s);
- b. Social Security number;
- c. number of weeks worked; and
- d. weekly rate.

2. Instructors will be paid for a maximum of 40 hours per week.

B. All invoices shall be accompanied by a statement which shows:

1. names of trainees;
2. Social Security number;
3. employment status at time of hiring;
4. sex;
5. race;

6. previous wage rate; and

7. current wage rate.

C. Invoices shall be submitted at the end of the training period if that period is seven weeks or less. Invoices shall be submitted monthly if the training period is seven weeks or more.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§911. Location of Training

A. All training locations shall be in Louisiana.

B. Exceptions to this may be made at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

§913. Amount of Training Grants

A. On-the-job training grants will be calculated at \$200 per job.

B. Pre-employment training grants will not exceed \$70,000.

C. Exceptions to this may be at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16: (September 1990).

Chapter 11. Local Economic Development Support Fund

§1101. Definitions

Urban Can organization whose service area includes a parish with a population of 50,000 or over.

Rural Can organization whose service area includes no parish with a population of 50,000 or over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1103. Urban

A. Applicant. Applicant organization may not be a tax levying body.

B. Staff. Must employ professional full-time executive director. Must submit résumé and evidence of employment by applicant organization.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. Monies received through the LEDS program may constitute no more than 50 percent of the current budget of the organization. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the Department of Commerce, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of Work. Performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1105. Rural

A. Applicant. Applicant may not be a tax levying body.

B. Staff. May employ professional full-time executive director or may contract for work. Must submit résumé and evidence of employment by applicant organization. If full-time employee or contract employee not applicable, must

submit evidence of capability of completing contracted scope of work.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. If the organization is one year old or less, monies received through the LEDS program may constitute no more than 75 percent of the current 1987 budget of the organization. If the organization is between one and two years old, the monies may constitute no more than 65 percent of the budget. If the organization is three years old or older, the monies may constitute no more than 50 percent of the budget. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the department, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of Work. Performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

Title 13

ECONOMIC DEVELOPMENT

Part V. Office of the Secretary

Chapter 1. Substance Abuse and Drug-Free Workplace Program

§101. Philosophy

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this State. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace Rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our Department and employees.

B. DED's philosophy is consistent with the State of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the State of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for State employees. Further, the Governor of the State of Louisiana issued Executive Order MJF 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001, et seq. This Department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§103. Applicability

A. These Rules apply to all employees and appointees of this department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions and individuals providing service to this department through a contract with a third party employer, i.e., temporary agency employees), and all other persons having an employment relationship with the department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary (hereinafter "employee(s)" unless otherwise noted).

B. These Rules do not apply to the Louisiana Racing Commission which will amend its current Rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-

employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who occupy safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this Department is attached as Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off-duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/State premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a State vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood.

2.a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;
- iii. prescription drugs not being used in accordance with the prescription;

iv. or any substance which affects the employees' ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this Department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employees' drug or alcohol use and the employees' action or inaction may have been a causative factor;

b. the accident meets the criteria of Paragraph (a) and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

NOTE: When post-accident/incident testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these Rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by a appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employees' physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

NOTE: When reasonable suspicion testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these Rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§109. Drug Testing Procedures

A. Drug testing pursuant to these Rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

- a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

- b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

- c. when the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

- d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

NOTE: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006.D, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:416 (March 1999).

§111. Alcohol Testing Procedures

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per one hundred cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this Department's mission. While the Department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first 10 workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;

5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a State vehicle or on DED/State premises; and

6. operating a State vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these Rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to:

1. written employee consent;
2. federal agencies when licensure or certification actions are required;
3. to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test;
4. and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This Department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these Rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these Rules, discovered in/on DED/State property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale,

distribution or transfer of illegal drugs or controlled substances while on duty or on DED/State property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§117. Employee Assistance Program (EAP)

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Department's EAP Coordinator within the Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§119. General Provisions

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use

of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these Rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§121. Appendix A

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

Title 13

ECONOMIC DEVELOPMENT

Part IX. Office of the Racing Commission

Chapter 1. Substance Abuse and Drug-Free Workplace Program

§101. Philosophy

A. The Louisiana State Racing Commission (LRC) is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this state. To accomplish this, the LRC hereby adopts these Substance Abuse and Drug-Free Workplace rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of the LRC and its employees.

B. The LRC's philosophy is consistent with the state of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the Governor of the state of Louisiana recently issued Executive Order 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001, et seq. The LRC fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

§103. Applicability

A. These rules apply to domicile employees, field auditors and appointees of the LRC, as well as potential employees and appointees to those positions.

B. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees/appointees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who incumbent safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing.

A list of the safety-sensitive positions within the LRC is contained within §121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

§105. Requirements

A. To maintain a safe and productive work environment, all LRC employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off duty.

B. The LRC prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in LRC business, on or off LRC/state premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a state vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood.

2.a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;
- iii. prescription drugs not being used in accordance with the prescription; or
- iv. any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:33 (January 2000).

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of the LRC. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment/appointment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is a reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of §107.A.2.a and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

NOTE: When post-accident/incident testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a

computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc. to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

NOTE: When reasonable suspicion testing is ordered, an LRC representative shall transport the individual being tested to and from the testing site. Under no circumstances should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:34 (January 2000).

§109. Drug Testing Procedures

A. Drug testing pursuant to this policy shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS)

guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the medical review officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

NOTE: In all instances in which direct observation is deemed appropriate, the designated LRC representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the LRC representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006.D, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to the LRC's qualified medical review officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with

an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to the LRC by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000).

§111. Alcohol Testing Procedures

A. Evidential breath testing (EBT) devices approved by the National Highway Traffic Safety Administration will be used by certified breath alcohol technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood, the results will be reported as positive to the LRC's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:35 (January 2000).

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with the LRC's mission. While the LRC's position is firm, the LRC will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service Rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first ten workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;
5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a state vehicle or on LRC/state premises; and
6. operating a state vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to written employee consent; federal agencies when licensure or certification actions are required; to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test; and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by the LRC, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. The LRC has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by this policy, discovered in/on LRC/state property, or upon the person of an LRC employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale, distribution or transfer of illegal drugs or controlled substances while on duty or on LRC/state property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

§117. Employee Assistance Program

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the LRC's Employee Assistance Program (EAP) coordinator within the Human Resources Division of the Department of Economic

Development. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the return-to-duty/rehabilitation monitoring testing set forth in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:36 (January 2000).

§119. General Provisions

A. The LRC reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, the LRC will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these rules is restricted to five specified drugs and alcohol, the LRC reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000).

§121. Safety-Sensitive Positions

A. There are no safety sensitive positions in the LRC at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:148 and R.S. 49:1001, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Racing Commission, LR 26:37 (January 2000).

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